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MUNICIPAL GOVERNMENT
IN
THE UNITED STATES

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MUNICIPAL GOVERNMENT IN THE UNITED STATES

BY

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PREFACE

Many years ago the author began work upon a history of municipal government in the United States, which, with the enthusiasm of youth, he hoped to make comprehensive and definitive. Numerous preoccupations interfered with the progress of the plan, but it was never abandoned. The present volume was actually begun with some vague idea that it was to be its fulfillment. It has not proved to be so. The comprehensive and definitive history of city government in our country remains to be written. Some day, let us hope, a young author will arise with time and patience enough to master the prodigious mass of material which the subject offers. In this book there remains of the original design only a few historical passages and a point of view.

The latter is much the more important. The author is firmly persuaded of the fundamental truth of that half of Seeley's aphorism which declares that "political science without history has no root." He has endeavored therefore to tell the story of the development of city government in the United States, not in meticulous detail, but with sufficient thoroughness to explain the institutions of today. It is made plain that the end of this process of development is not yet, nor ever will be, until cities themselves cease to exist. Such a point of view is necessarily inconsistent with the advocacy of particular reforms. This may prove disappointing to some who seek support for their pet ideas, but on the whole there is enough controversial literature on the current aspects of city government. The author has not hesitated on other occasions to advocate very earnestly certain reforms, especially the city manager plan, but nothing of the sort will be found here.

The long period from 1800 to 1888 has been covered in two chapters and portions of two others, while the doings of the last forty years occupy two-thirds of the book. This might at first sight appear to be a disproportionate arrangement. As a matter of fact, however, it is not in defiance of the historical spirit but in accordance with it. We lack, it is true, the perspective necessary to pass judgment on the merits of the recent plans and devices for municipal improvement, but we need assume no remote position to be able to assure ourselves of their unprecedented number and in many instances almost revolutionary character. On the whole, few will attempt to deny that the history of city government in the United States during the past four decades has been much more interesting and significant than all that went before it.

Some word of apology seems to be necessary for the publication at this time of another general work on municipal government in the United States. To do so is to challenge comparison with several excellent works already in the field. It is not impossible, however, that a work based on many years not only of study but of practical experience in municipal politics and administration may add something to the common fund of knowledge of municipal affairs.

The exact field to be covered in this volume has been determined in the light of the immediate publication in this series of a volume by Dr. L. D. Upson entitled "The Practice of Municipal Administration." To that work has been left altogether the detailed discussion of purely administrative problems and methods. The two volumes have been worked out side by side in such a way as to cover the whole field of municipal government without tedious repetitions in one of material contained in the other.

The author desires to express his obligation to Professor F. A. Ogg, the editor of this series, for his extremely helpful criticisms. The list of the others to

whom he owes acknowledgment for information or suggestions is a long one, including students, professional colleagues, and public officials. Dr. L. D. Upson, Director of the Detroit Bureau of Governmental Research, and Dr. H. W. Dodds, Secretary of the National Municipal League, have been frequently consulted in the course of the preparation of the book and have never failed to respond generously. Professor Maurice Vauthier, President of the Council of Administration of the University of Brussels, and Mr. I. G. Gibbon, of the British Ministry of Health, have given very valuable information concerning the government of Brussels and London respectively. Among others who have helped at various stages of the work are Professor A. R. Hatton, Mr. Mayo Fesler of Cleveland, Mr. Louis Brownlow, City Manager of Knoxville, Tennessee, and formerly Commissioner of the District of Columbia, Mr. John G. Stutz, Secretary of the City Managers Association, Mr. Joseph T. Miller of Edgewood, Pennsylvania, Professor William Anderson of the University of Minnesota, Mr. J. Otis Garber of Toledo University, Mr. Arch Mandel of the Dayton Research Association, Mr. E. R. Cheeseborough of Galveston, Texas, Mr. Flavel Shurtleff, Secretary of the National Conference on City Planning, and Mr. E. B. Schulz of the University of Michigan.

The author is peculiarly indebted to Mr. Paul Webbink, Secretary of the Bureau of Government of the University of Michigan, whose assistance has been invaluable in all the later stages of the work, and to Miss Dorothy A. Shulze, who patiently translated the author's scrawl into clean copy.

Villa Stella Maris,
Ostende, April 5, 1926.

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MUNICIPAL GOVERNMENT IN THE UNITED STATES

MUNICIPAL GOVERNMENT

CHAPTER I

THE CITY IN CIVILIZATION

The marvel of the city

THE city is the most marvelous material manifestation of man. Nothing else he has done can equal the magnitude and complexity of even a modest city, while the modern metropolis outruns imagination. Swift credited to Gulliver no observation intrinsically more fantastic than the thought of five million men and women who, although they take from the soil not a morsel of their food nor an atom of the raw material for their industry, dwell prosperously in the built-up area of New York City. Equally astonishing are the achievements by which such a vast and congested population is kept in health and good order, educated, moved about to its work and play, and supplied with scores of services without which community life on such a scale would be intolerable. The average inhabitant sees only the eddies of life which swirl without apparent meaning through the streets he frequents and about his home and workplace. He turns the tap for his morning bath, boards the subway, submits to the direction of a traffic officer, without a thought of the wonder of city life and the complexity of forces which make it a possibility. If his accustomed conveniences fail him, he grumbles and frets much as he does at bad weather, but with little more intelligent hope of controlling them. To one perched, however, on the roof of its tallest building, the city becomes visible as a whole. The port which is the occasion of its existence, with its vast system of docks, the streets with their lines

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of surface and elevated tracks, the railway terminals and subway stations, the clumps of tall buildings marking the business centers, the lower roofs which cover the homes of the people,—all are spread out, to be read like a scroll by the understanding eye. It is the object of this book to supply, for the governmental aspects of city life in America, a similar post of observation from which a comprehensive view of the conscious attempts of the city community to direct its life may be obtained.

The origin of cities

The earliest motive for the establishment of permanent local groupings of population was doubtless defense. Families of kinsfolk gathered within a rude stockade so that they and their poor belongings might be safe from marauders. It was among the inhabitants of such wretched villages that division of labor—the differentiation of economic function which characterizes civilization—began. Thus humbly did city and civilization begin life together; and they have remained inseparable. In the course of time, the villages best capable of defense—Athens, clustering close about the steep slopes of the Acropolis, or Rome, entrenched in the marshes of the Tiber—outdistanced their fellows in population, wealth and military prowess. Mere defensibility alone, however, never accounted for a considerable city. Rarely, even in those far-off days, could food enough be raised within the narrow circuit of the walls to feed a numerous population. The growth of the city, therefore, depended, for one thing, upon the area within which the products of city industry could be readily exchanged for food and raw materials. The earliest great cities developed in the Nile and the Tigris-Euphrates valleys, where easily navigable streams stretched for great distances through fat farm lands. Access to water transportation was an almost essential condition of a populous city in the ancient world.[1] The early importance of the shores of the

[1] Jerusalem is an exception, but it was located at the intersection of caravan routes across the desert.

Ægean was due to the safety of the adjacent waters for the tiny craft of primitive seamen. At a later period the Mediterranean became the avenue of world communication and around its shores sprang up scores of prosperous cities. In their growth the exchange of commodities played perhaps as great a part as their manufacture. Where trade routes met, especially where one means of transportation gave place to another—camel's back to ship's belly—there gathered a motley crew of sailors, porters, ship carpenters, traders. There the merchants grew rich and the city swelled with development,—the presence of a national shrine, as at Jerusalem, or a center of government and administration, as at Rome. The Rome of the Cæsars, indeed, supported its vast population by tribute wrung from its far-flung provinces rather than by commerce or industry. In general, however, ancient cities lived by exchanging their own manufactures or those of other cities for food and raw materials, and their relative development depended upon the more or less happy concurrence of means of transportation.

Development in modern times

These causes for the existence and growth of cities have been carried over into modern times. Except that artificial means of transport, such as canals and railways, have assumed a vast importance there has been no essential change. New York is as much a creature of transportation facilities as Alexandria or Carthage. She grew but slowly until the construction of the Erie Canal first opened for her an easy way into the interior. Her millions have multiplied because she has become the focus of the railways of half a continent. This vast system of inland transportation would have found some other outlet had it not been for her incomparable port. It is no longer essential to vast size that a city be located on a great stream or arm of the sea. Berlin and Paris are inland cities which enjoy only limited and artificial water transportation. Most of the greatest cities, how-

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ever,—New York, London, Chicago—are situated by navigable waters, upon which their products are distributed to the world and the world's stores of food pour in to feed their street-bred millions.

The age of the city

This is the age of the city. Steam, electricity and thousands of lesser products of man's ingenuity have vastly intensified the effect of the old-time causes of city growth. The result has been to crowd a large part of the world's population into great, close-packed aggregations of population as unprecedented as they are stupendous. This process of concentration in the United States has taken less than a century and is still in progress. In 1800, 210,000 Americans, four percent of all the inhabitants of the United States, lived in the six cities of more than 8,000 population. The census of 1920 showed 924 such cities with 46,307,000 inhabitants, or 43.8 percent of the whole. More than half (51.4 percent) of the people of the United States now live in places of more than 2,500 inhabitants, which figure the census authorities have rather arbitrarily fixed as the boundary between urban and rural life. One out of twenty-five Americans was a city dweller in 1800; one out of two in 1920.

Causes of urban growth

The rapid growth of cities began with the "Industrial Revolution" and the no less revolutionary improvements in agriculture and transportation which accompanied it. In England, where cities first received the impetus of modern industrialism, by 1801 21.3 percent of the inhabitants already lived in places of 10,000 or more. On the continent of Europe and in the United States, industrial development came later but was as promptly followed by rapid growth of cities. The specific causes are four in number: (1) The productivity of industry has been multiplied manyfold by means which have made industry more than ever a city affair. Most manufactured commodities today are produced in factories and factories, if not located in cities, cause cities to spring up around them. (2) If it had not been for improve-

THE GROWTH OF URBAN POPULATION IN THE UNITED STATES, 1890-1920[1]

Cities Grouped by Number of Inhabitants	1920				1910		1900		1890	
	Number of Cities in Each Group	Number of Inhabitants in Cities of Each Group	I % of Total Population in Each Group	II % of Total Population in Each Group and Higher Groups	I	II	I	II	I	II
1,000,000 + ...	3	10,145,532	9.6	...	9.2	...	8.5	...	5.8	...
500,000-1,000,000 ...	9	6,223,769	5.9	15.5	3.3	12.5	2.2	10.7	1.3	7.1
250,000- 500,000 ...	13	4,540,838	4.3	19.8	4.3	16.8	3.8	14.5	3.9	11.0
100,000- 250,000 ...	43	6,519,187	6.2	26.0	5.3	22.1	4.3	18.8	4.4	15.4
50,000- 100,000 ...	76	5,265,747	5.0	31.0	4.5	26.6	3.6	22.4	3.2	18.6
25,000- 50,000 ...	143	5,075,041	4.8	35.8	4.4	31.0	3.7	26.1	3.6	22.2
10,000- 25,000 ...	459	6,942,742	6.6	42.4	6.0	37.0	5.7	31.8	5.4	27.6
5,000- 10,000 ...	721	4,997,794	4.7	47.1	4.6	41.6	4.3	36.0	3.8	31.4
2,500- 5,000 ...	1,320	4,503,953	4.3	51.4	4.2	45.8	4.1	40.0	4.0	35.4
Total Urban Population	2,787	54,304,603	51.4	...	45.8	...	40.0	...	35.4	...
Total Rural Population.....		51,406,017	48.6	...	54.2	...	60.0	...	64.6	...
Total Population of U. S.....		105,710,620	100.0	...	100.0	...	100.0	...	100.0	...

[1] Compiled from the Census Reports for 1920 and previous years.

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ments in transportation and the consequent wider market for city-made goods, labor-saving machinery would have reduced instead of increased population. The steam-train and steamship, however, have made it easier to cross a continent or an ocean than it had been before to cover two or three hundred miles of land or water. At the close of the American Revolution it took five days for an overland passenger journey from New York to Boston. Goods went mostly by water at a time expenditure of from one to three weeks, according to the state of the wind. Under such circumstances, almost every usable commodity was home-grown or home-made. Today the cutlery of Sheffield, the cottons of Manchester, the automobiles of Detroit, the structural steel of Pittsburgh are articles of familiar use in every quarter of the globe. (3) But these two causes taken together could never have made city dwellers of half our population or four-fifths of that of England, if it had not been for even more startling improvement in agricultural machinery and methods. At the beginning of the nineteenth century the only farm implement operated by other than man-power was the plow. There were no mowing machines, no reapers and binders, no drillers and seeders. Farming was almost altogether a matter of back-breaking labor. Men were just beginning to breed cattle, fruits and vegetables scientifically. Little was known of agricultural chemistry and destructive insects flourished unchecked by the discoveries of the entomologist. It is safe to say that one man can do in agriculture today what it took ten men to do in 1800. It has not been necessary, therefore, for the agricultural population to increase proportionally with the population of cities. The country has not been, except in sections unfavorable to agriculture, actually depopulated to build the towns, but its increase in population has been slight as contrasted with what it must have been if the wheat to feed New York and Chicago were still reaped with a scythe. The surplus

left by the high birth rate of the fecund country people has been released from the soil to fill the factories. (4) Nor could city population have swelled to its present proportions if the high mortality of city people had not been reduced by modern medical and sanitary science. There has always been a movement of energetic youth from the land to the city. In times past, however, it was ordinarily offset by the ravages of disease in cities without sewers, pure water, smallpox inoculation, or any of the arts of preventive medicine.

Present rate of growth

The magnetic attraction of the city—that call which has lured the Dick Whittingtons of all ages—for more than a century scarcely felt the slightest mitigating force. There may be some comfort to those who view the growth of cities with alarm in the fact that there is now evident a relaxation in its influence. Since the decade 1840-1850, when it reached its high point of 99.2 percent, the rate of increase in American cities of 8,000 or more has somewhat irregularly declined to 30.1 percent in the decade 1910-1920.[1] The rate of increase in this class of cities, however, has remained more than double that of the country at large (14.9 percent for the period 1910-1920), while the increase of the rural population (that living in places of less than 2,500 population) has sunk to a scant 5.4 percent.[2] Cities as a whole may be growing more slowly than three quarters of a century ago, but their population is still augmenting at a portentous rate and the rural population is still draining into them in a steady flood. That the era of urbanization is not closed is confirmed by the evidence from other countries. France, without Alsace-Lorraine, suffered a loss of population in the decade 1911-1921 amounting to 4.8 percent, but her cities of 30,000 or more population increased 2.7 percent in the same period.[3] Only in

[1] Compiled from Census of 1920, Vol. I.—*Population*, p. 43, Table 27.
[2] Census, 1920, Vol. I.—*Population*, p. 58, Table 38.
[3] *Journal Officiel*, 30 Decembre, 1921, p. 14,234.

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England and Wales do cities seem to have reached anything like their maximum degree of saturation. In the last three decades the rate of increase of population in urban districts, rural districts and the country at large has been as follows:

	1891-1901	*1901-1911*	*1911-1921*
Urban Districts	15.2	11.1	5.2[1]
Rural Districts	2.9	10.2	4.3[1]
England and Wales	12.17	10.89	4.93[2]

It is to be noted, however, that in 1901, 77 percent of the population of England and Wales was already living in districts classed as urban.[3] We cannot fix upon any exact proportion of the whole which city population cannot exceed, but the fact that the English urban and rural rates of increase are now drawn close together is exceedingly suggestive. Obviously there must be a stop somewhere short of complete urbanization.[4] Unless new agricultural processes are discovered or new lands opened up to cultivation, urban and rural growth will tend toward a common rate. In our country, however, the time when cities will grow no faster than the country is far off. Our cities will for many years, barring some fundamental economic change, continue to grow faster than the rural areas. We may expect to see fewer and fewer of those marvelous "booms" with which cities like Chicago and Minneapolis began their careers. Only about a score of cities attained, between 1910 and 1920, a growth for the decade in excess of one hundred percent. In almost every case, a well-defined, if fortuitous, cause existed for it—the automobile industry in Michigan cities, oil discoveries in Texas and Oklahoma, suburban development around the crowded centers of Chicago

[1] Census of England and Wales, *Preliminary Report, etc.* (*Administrative and Parliamentary Areas*), 1921, Table E, p. xii.

[2] Table I, p. 1.

[3] The figures for 1911 and 1921 were 78 percent and 79 percent respectively.

[4] The extraordinary situation in such small industrial areas as Massachusetts and Rhode Island, where 94.8 percent and 97.5 percent, respectively, of the population is classed as urban, need not affect our conclusion.

and New York and residence development in cities like Miami and Los Angeles, which are, in a sense, suburban to the nation. Similar causes will produce like spurts in the growth of other communities. On the whole, however, our cities are probably destined to grow more soberly than in days gone by, but with a steady gain upon the laggard rural population.

Great cities

This is the age not only of the city, but of the great city. No such aggregations of population as those of London, New York, Paris and Berlin have ever before existed.[1] There were, it is true, great cities in antiquity, but when we remove the veil of legendary exaggeration, they are left with numbers moderate enough for these days. Athens, at the height of her glory in the fifth century B.C., never much exceeded 115,000—we may compare her in this respect with Salt Lake City (118,000)—while Rome, at her greatest, belonged in the census class of Cleveland with a probable 800,000 people.[2] Into the huge vortices of London, Paris and Berlin are sucked the life of whole nations. That we experience less of this moral and intellectual centralization is due only to the vast area of the United States which has allowed the development of more than one center of population. And even here there is daily evidence of the extent to which

[1] The population of these cities, according to the latest census figures, was as follows:

New York, 1920	5,620,048
London (Administrative County), 1921	4,483,249
Berlin (Greater), 1919	3,804,048
Paris, 1921	2,906,472

With the exception of Berlin, the political limits of the population which is given above are much smaller than those of the real urban community of which they are the center. The populations of the metropolitan areas of New York, London, and Paris are as follows:

New York (area within ten miles of city boundary)	7,674,349
London (Metropolitan Police District)	7,476,168
Paris (including the "banlieu")	4,388,000

[2] See J. Beloch, *Die Bevölkerung der Griechisch-Römischen Welt* (1886), especially pp. 101 and 404. R. Lanciana, *Ruins and Excavations of Ancient Rome* (1897), arrives at the same conclusion.

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we turn to New York for leadership in fashion, art, literature, politics and finance. If the principle formulated by the great French statistician, Levasseur,[1] "The force of attraction of human groups is, in general, proportional to their mass", were wholly true, there would be grave danger of the great cities seriously menacing the economic and political independence of the rest of the country. But while there is some confirmation for Levasseur's law in French and German statistics, the English census figures have turned dead against it. The population of London, including the rapidly growing suburbs of the "Outer Ring", is now increasing somewhat more slowly than England and Wales as a whole. In the United States the cities of more than a million population have increased during the last two decades less rapidly than the total urban population. Between 1910 and 1920, cities in general increased 25.7 percent and those of a million or more inhabitants, 19.3 percent. In the last census period, the most rapidly growing cities were those between 25,000 and 50,000; i.e., 34.4 percent. At the same time cities of between 500,000 and 1,000,000 showed an extraordinary increase of 33.4 percent. This was due not so much, however, to the growth of cities already in that class as to the promotion into it of four cities, one of them Detroit with 993,000 people.[2] Of the nineteen cities of more than 250,000 people in 1910, only six increased faster during the following decade than the general city rate, and only Detroit (113.3 percent) and Los Angeles (80.7 percent) approached the phenomenal. Indeed, the rates of increase of our large cities tend to show a steady decline from the peak which they usually reached early in their history. Chicago may be taken as typical. Her percent of growth for each decade beginning with 1840-1850, her first appearance in the census tables, was as follows: 1840-50—570.3; 1850-60—264.6;

[1] E. Levasseur, *La Population Française*, II, 355.
[2] Detroit's population in 1910 was 465,766.

1860-70—173.6; 1870-80—68.3; 1880-90—118.6; 1890-1900—54.4; 1900-10—28.7; 1910-20—23.6. New York, growing at her rate for the last decade (17.9 percent), will add a million to her population by 1930—growth enough, to be sure. The other great cities will grow in their respective measures, but probably more slowly as the years go on. The census tables will be most disturbed by the cities of 100,000 pushing up to 250,000 and cities of the latter size crowding into the half-million group.

How great cities grow

One more principle of great city growth: they grow fastest at the periphery and slowest at the center. Central London, indeed, has shown for years a declining population, and for two decades the total population of the Administrative County has slowly decreased. The cities of the Outer Ring, however, are among the fastest growing in England.[1] Paris gained but 18,362 persons from 1911 to 1922, while the population of the Departments of the *Seine* and *Seine et Oise,* including the suburbs of Paris, increased 257,649 and 104,056 respectively. The population of the Borough of Manhattan actually declined 2 percent in the period 1910 to 1920, while the other boroughs grew as follows:

Bronx 61.8, Queens 65.1, Richmond 35.6 and Brooklyn 23.5.[2] The chief causes of this phenomenon are: (1) the

[1] The comparative rates of growth of the Administrative County of London and the Outer Ring are expressed in the following table:

	Administrative County	*Outer Ring*
1801-1811	18.4	18.4
1811-1821	21.1	17.5
1821-1831	20.0	14.4
1831-1841	17.7	15.4
1841-1851	21.6	11.2
1851-1861	18.8	30.4
1861-1871	16.2	50.8
1871-1881	17.4	50.0
1881-1891	10.4	50.1
1891-1901	7.3	45.5
1901-1911	0.3	33.5
1911-1921	0.8	9.4

Royal Commission on London Government (1923), *Minutes of Evidence,* Part II, pp. 153-154.

[2] U. S. Census, 1920, Vol. I.—*Population,* 78.

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desire of many persons to escape from the crowded conditions of the city; (2) the displacement of dwellings by business structures at the center, increasing property values while decreasing population, and (3) the tendency of heavy industries to remove from a region of high values, taking with them great numbers of their workers. The growth of great cities is not a matter of adding a certain number of blocks each year to the already built-up area. More often the outthrust population, following lines of transportation, establishes itself at new centers appreciably separated from the mother city, which grow in turn as partially independent units. In time, if the movement of population continues long enough, the older and newer communities may grow together so that no stranger can tell where one ends and the other begins. The tenacity with which local sentiment continues to attach to these units long after physical evidence of their identity has disappeared is often a serious obstruction to the extension of city boundaries to correspond with the actual urban area.

The city's part in civilization

There is something more than curious coincidence in the fact that the first appearance of the city accompanied the transition from savagery to a more ordered life, and that city growth has since kept even pace with the progress of civilization. Without the city, civilization was inachievable. Except for the division of productive functions, which the gathering of men in cities afforded, the world would be peopled today by no more than a few rude husbandmen. Until one man made shoes and another coats, there were no good shoes or coats and always an insufficiency of both. That this process of division has been carried so far that no man sees the end of his work is not the occasion for forgetting that it began and has continued by virtue of city conditions. Unless one is prepared to condemn the results of time, to resent bathtubs, typewriters and motor cars, one must respect the city as the cradle of progress, not merely stare at

it as the most stupendous phenomenon of twentieth century life, but honor it as the custodian of that life. All this may seem the exaltation of the material, but in the fields of mind and spirit, the city has been no less potent. It gave the opportunity for those contacts of ideas without which intellectual achievement is impossible. What first distinguished the alert Athenian from the sleepy shepherd of the hills if not the daily sharpening of wit on wit in market place and ecclesia? What but men from many lands, marrying fresh idea to fresh idea, begot the full life of Florence? Art, literature, music have not only been nurtured on the wealth and leisure of city population; they were made possible by the conditions of city life. It would be idle to deny that the city displays evils from which simpler rural life is comparatively free. The fact remains that the light of life burns in the city and shines only by reflection in the fields—a very brilliant reflection in these days of newspapers, telephones and radio, but a reflection still.

Popular distrust of cities

Of course, this enthusiastic belief in the city runs quite counter to certain popular ideas. They are indeed few who, regarding cities as a morbid growth, would go back to some vague "good old" time. It is, however, a characteristic American attitude to regard them as inevitable but evil. It is evidenced by such phrases as "God made the country while man made the town". It is expressed in countless songs and tales which laud the pure beauty of the country and decry the filth and clamor of the metropolis. These are part and parcel of the belief that the country makes men brave, true and strong, while the city poisons the soul and enervates the arm. Deep down in the subconscious mind of even the confirmed city dweller these fundamental presuppositions of our race—old as those German tribes who, Tacitus tells us, could not be forced or bribed to dwell in cities—live on slumberously. Their visible outcrop is a destructive pessimism which sees no hope in or for the city

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and resigns itself, not too reluctantly, to the situation. There is no obstacle to democratic city government which operates more often or with more baneful effect than this pessimism, founded though it be in delusion. If it is true that all that is worst finds, in the city, the depth of the maelstrom, all that is best in material achievement and spiritual exaltation finds there the height from which it becomes visible to the world. City democracy meets obstacles internal and external which are not found in a simpler society, but its victories are the more worth while. To hold sway over the barren hillsides of Appenzell and its few poor farmers is an easier achievement than, but by no means so useful a one as, to govern New York or Chicago.

Purpose of the study of city government

There is sufficient excuse for a study of city government in a scientific interest in the city as the greatest of socio-economic facts. From the purely scientific point of view, the city is as inevitable as a mountain or river, and no more good or bad than they. Political science, however, recognizes a profound difference between social and so-called natural phenomena. The former are within certain limits shaped by the will of individuals. The complex of forces which determines the destiny of city-dwellers may be altered in its effect by deliberate community action or even by the whims of those who sit in the conning towers of administration. There is no reason, therefore, why the pursuit of the scientific method in the study of municipal government should lead to a learned fatalism as depressing as the pessimism of the thoughtless. The motive of most students of city government is to prepare themselves to act promptly and effectively for the improvement of the conditions of municipal life. They are not so much incipient scientists as prospective citizens. To return to the illustration of an earlier paragraph,—if the water supply is polluted, the transportation service deranged, the police department inept, they desire, instead of bending before these

misfortunes as acts of God or products of an inevitable evolution, to take practical steps toward their reformation.

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CHAPTER II

THE CAPACITY OF CITY POPULATIONS FOR SELF-GOVERNMENT

Growth of cities and the problem of government

WHILE our cities have been increasing in population they have been even more rapidly developing a prodigious complexity of life. It would be beyond the scope of a work on municipal government to discuss the details of their social structure. The social structure of the city, however, affects its government in a double sense: objectively, by creating concrete problems to be solved, and subjectively, by its influence upon the civic virtues of the population. A proper understanding of the problem of municipal government, therefore, requires the consideration of such of the facts of city life as bear upon it in either of these directions.

Are cities capable of self-government?

The mere fact of agglomeration has always brought with it special problems of police and sanitation. The modern city necessarily must be paved, sewered, policed, lighted, and provided with fire protection, schools, transportation systems, water, gas, electricity, parks, playgrounds and numerous other services. Science and philanthropy concur constantly to increase the number and to raise the standards of these services. The performance of these functions brings into being vexatious problems of finance, administrative organization and personnel management. Some authority, within or without the city, must be prepared to exercise sound judgment in determining policies, adopting methods, selecting devices which involve almost every field of human knowledge. To what extent the city should be trusted with powers of self-government, or, as it is often expressed, "home rule", rests fundamentally on the relation between the difficulties just suggested and the capacity of city popula-

tions for self-government. If agglomeration raises difficulties not only objective but subjective, if at the same time that it creates problems it diminishes the ability of the city population to deal with them, the case for self-governing municipal democracy is weak indeed. One of our most profound students of municipal government has expressed a very definite conviction on this point. "The character of modern urban populations," he says, "is such that it would appear to be doubtful whether, in cases where a wide suffrage is the rule, they are capable of discharging efficiently many of the functions the discharge of which modern urban life imperatively demands. For, whether we regard the matter from either an *a priori* or an historical point of view, urban life does not favor the development of democratic government. Urban populations have in the past too easily and too generally fallen under the control of oligarchies and despots or bosses, to permit us to entertain the hope that under modern conditions their fate, if left to themselves, will be much different than it has been in the past. For the conditions of modern cities certainly favor, just as much as did those of former cities, the rule of the oligarchy and the despot, or the boss." [1] We may profitably take up this challenge to our faith in democracy.

Many peculiarities of city population have no special significance

In discussions of the structure of city populations, much emphasis has been laid upon certain of their peculiarities which, upon analysis, appear to have small relation to capacity for self-government. It has been noted that in about half our cities of over 100,000 inhabitants the number of females slightly exceeds that of males. It is to be doubted if this disproportion is anywhere great enough to produce appreciable social consequences. It obviously has no direct political effect, the political integrity and capacity of women comparing very favorably with that of men.

(1) Disproportion of the sexes

[1] F. J. Goodnow, *Municipal Government* (1909), 94. The same language has been repeated in F. J. Goodnow and F. G. Bates, *Municipal Government* (1919), 108-109.

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(2) Excess of crime in cities

It has often been pointed out that there is much more crime in cities, in proportion to population, than in the country. If it were true that city life tended to incline men to crime, it might be argued that ethical considerations—including those relating to government—were less influential with city than country people. There is, however, no evidence that cities breed criminals. The statistics as to the birth-places of criminals are meager and of doubtful validity. All that can confidently be said is that there is more crime in cities because cities afford greater opportunities for crime—especially crime against property.

(3) Prevalence of vice in cities

It is urged, likewise, that commercialized vice and other evidences of sex irregularity, such as a high rate of illegitimate births, are prevalent in cities. It is customary, in this connection, to speak of the wickedness of the night life of London, New York and Paris. It would be a serious error, however, to assume that any large proportion of their population share in that life. The so-called gayeties of Paris are confined to a few blocks along the Grand Boulevards and in the Montmartre district. By eleven o'clock in the evening most of the houses of Paris are dark and few people are on the streets or moving on "trams" or subways. The fact is, these cities are the pleasure centers of whole nations and more. There are between sixty and seventy first-class theaters [1] in New York—more than in Philadelphia, Chicago, Detroit, Cleveland, St. Louis and Boston combined—not because New Yorkers are more inclined than others to theater-going, but because of transient patronage. The same thing is true of the more illicit pleasures. Vice, like crime, finds its opportunity in the city, but there is no evidence that it has any peculiar hold on city people. The fact that illegitimacy is much more common in cities than in the country may be accounted for in part by country girls who seek to hide their shame in

[1] Exclusive of vaudeville, burlesque, and motion picture houses.

the anonymity of the city crowds. Where the rate rises very high, as in Paris, it is largely because of unions which are regularized by custom, if not by law, and which involve no individual perversity. Industrial conditions, which are notoriously less favorable to early marriage than those of agriculture, have tended to produce regrettable changes in standards of sex behavior. So long, however, as sex relationships are controlled by genuine standards—even mistaken ones—it is not likely that there will occur any fatal decline in the influence of ethical motives upon the duties of citizenship.

(4) Physical deterioration in cities

It is charged that city life results in physical deterioration. The abnormal death rates of the past, however, have succumbed to the attacks of medical science. If they remain somewhat higher than in the country, that fact is chiefly ascribable to the physical hazards of city life—the accidents of industry and the streets. It must be admitted that the physical examinations conducted under the "Selective Service Act" of 1912 showed a higher proportion of rejectable defects among men drafted from the cities, contradicting the evidence of European military experience which somewhat favored the city dweller. It is fair, however, to take into account the possibly greater severity of the medical examinations in the cities, and the fact that voluntary enlistment, much more frequent in the city than the country because of the proximity of recruiting stations, had already drawn away the élite of the city youth. Furthermore, to have much point for the purposes of the present discussion, physical deterioration would have to go to the point where it would engender moral degeneracy. There is no evidence of even a tendency in that direction. Certainly most of the grounds for the rejection of a prospective soldier, for example pronated arches or color blindness, can scarcely be said to hamper the ordinary performance of civic duty or to represent a dangerous type of physical degeneration.

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(5) Small percentage of home ownership in cities

It is insisted that home ownership is much less common in the city than in the country. The census of 1910 showed 62.8 percent of farm families owning their homes, while in few large cities did the proportion exceed 33.3 percent, and in New York sank to 11.7 percent. Just what the psychological effect of home ownership is cannot definitely be ascertained, except as it is associated with tax paying—a conservative and sobering influence which might be much more widely extended if the "rates" were assessed to the occupier, as in England. There may be less inspiration to civic virtue in a steam-heated flat than in a separate dwelling. Such speculations, however, are all within that realm of fancy from which Hawthorne protested against the base-burner stove as less provocative of patriotism than the open hearth.

Heterogeneity and self-government

We cannot so lightly dismiss, however, the charge that the capacity of city populations for self-government is impaired by their excessive heterogeneity. It is an axiom of political science that democracy works best in small, homogeneous units. Such units are capable of a genuine public opinion—an integrated opinion of the whole body and not of a mere chance majority of its individual members. In the discussion of any public question, the people of such a community start with a large common fund of tradition and culture. They make up their joint mind by rational processes somewhat approximating those of the individual. They may be led by argument supported by evidence, which they test by common standards. The larger and more heterogeneous the unit, the more difficult becomes the creation of a community opinion. Large scale democracy has had but a brief history, and, while Americans accept it as superior to other systems, its triumphs are admittedly shadowed by failures almost as conspicuous.

Cities, even small cities, often attain a degree of heterogeneity much higher than that of the country at large.

It becomes truly appalling in our great cosmopolitan centers. This is due in part to the extremes of wealth and poverty which meet in our cities. The classes and the masses confront one another in them with all the bitterness that comes of ignorance of one another's character and intolerance of one another's interests. The natural leaders of urban life are often so far removed from the people as to be utterly unable to fulfil their function, perforce abandoning the task to demagogues and wire-pullers. In most great cities the difficulty is intensified by the fact that only a minor fraction of the population are natives of the city. This is due, quite obviously, to the fact that cities, whose natural growth is generally somewhat less than that of the country at large, are recruited by means of immigration. There has always been a pronounced movement from the country to the city, although until the nineteenth century it little more than sufficed to make up for the ravages of pestilence. The magnetic attraction of a city is normally exercised most forcibly on its immediate environs. The radius of its activity increases directly with its size, and in the case of the largest cities, extends to the limits of the nation and beyond. Meuriot presents a strong array of European statistics on this point, concluding with the proportion of inhabitants born in the principal cities of Europe: London 68 percent; Vienna 44 percent; Berlin 41 percent; Paris 35 percent; and St. Petersburg 32 percent.[1] The movement cityward of young men and women still farther raises the proportion of immigrants in the active adult population. Immigration to the great European capitals, however, is almost altogether limited to the country in which they are situated. Paris, which has proved most attractive of them all to foreigners, had, on the day of the census enumeration of 1921, 221,000 naturalized persons and aliens out of a total population

[1] Paul Meuriot, *Des Agglomérations Urbaines dans l'Europe Contemporaine* (1898), 271-272.

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present that day in Paris of 2,843,000—or, in other words, 7.7 percent of the whole.[1] In a new country which is rapidly developing, the proportion of immigrants to the total is always abnormally high. Our census returns throw no light on this subject, but no statistical demonstration is necessary to support the assertion that many of our mushroom cities have been peopled almost altogether from outside, and from far outside, their boundaries. The silence of our census authorities on the matter of immigration from other parts of the country is perhaps explicable because of the attention which must be given to a much more startling phenomenon—foreign immigration. Of the total population of our cities in 1920, 19.1 percent were foreign born and in the great cities, the proportion rose much higher.[2] New York, out of a population of 5,620,048 in 1920, had 1,991,547 inhabitants of foreign birth, or over 35 percent, a proportion which is substantially maintained in all our other great cities. This enormous foreign population is divided among several races. The heterogeneity of the population of New York may be faintly grasped when we recall that it contained in 1920, 126,000 natives of Austria; 145,000 of Poland; 194,000 of Germany; 203,000 of Ireland; 390,000 of Italy, and 479,000 of Russia.[3] If we join with them the often imperfectly Americanized second generation (born in New York of foreign parents), we can see New York as in a sense she really is, a composite of great Slavic, Irish, German, Italian and Jewish cities, each one of which would be a sufficient problem in itself. The concentration of these immigrants of each nationality in a particular section of the city tends to increase the verisimilitude of this picture. Many of our cities have their so-called Little Italies, Little Hungaries, etc., although

[1] *Journal de la Société de Statistique de Paris,* 63ième année, No. 5 (Juillet, Août, Septembre, 1922), p. 230.

[2] The proportion for the whole country was 13 percent and for the rural districts 6.5 percent—U. S. Census, 1920, III, 15.

[3] These are mostly Russian Jews.

RACIAL HETEROGENEITY IN CERTAIN CITIES[1]

TABLE SHOWING, FOR CERTAIN SELECTED CITIES, THE NUMBER OF FOREIGN-BORN WHITES, NEGROES, AND THE FOREIGN-BORN OF CERTAIN NATIONALITIES

Cities	Population	Foreign-born Whites	Percent of Foreign-born Whites	Negroes	Natives of Great Britain	Natives of Ireland	Natives of Scandinavia	Natives of Germany	Natives of Hungary	Natives of Poland	Natives of Russia	Italy	
1. Chicago	2,701,705	805,482	29.8	109,458	37,914	56,786	90,312	112,288	26,106	137,611	102,095	59,215	1.
2. Philadelphia ..	1,823,779	397,927	21.8	134,229	40,242	64,590	5,037	39,766	11,513	31,112	95,744	63,723	2.
3. Boston	748,060	238,919	31.9	16,350	17,766	57,011	9,590	5,915	360	7,650	38,021	38,179	3.
4. Detroit	993,678	289,297	29.1	40,838	24,650	7,004	5,025	30,238	13,564	56,624	27,278	16,205	4.
5. St. Louis	772,897	103,239	13.4	69,854	5,106	9,244	1,478	30,089	6,637	5,224	13,067	9,067	5.
6. New Orleans ...	387,219	25,992	6.7	100,930	1,525	1,534	1,002	3,418	81	230	1,348	7,633	6.
7. San Francisco .	506,676	140,200	27.7	2,414	14,121	18,257	12,978	18,513	1,390	2,152	5,752	23,924	7.
8. Minneapolis ...	380,582	88,032	23.1	3,927	4,336	2,066	45,435	6,439	571	4,789	6,222	766	8.
9. Seattle	315,312	73,875	23.4	2,894	11,662	3,455	21,599	4,827	350	881	3,348	3,094	9.
10. Birmingham ...	178,806	6,084	3.4	70,230	1,261	230	114	458	47	93	706	1,653	10.
11. San Antonio...	161,379	36,646	22.7	14,341	942	509	229	2,564	68	249	732	575	11.
12. Dayton	152,559	13,111	8.6	9,025	783	682	118	4,119	1,921	674	1,124	514	12.
13. Des Moines....	126,468	11,224	8.9	5,512	1,808	643	2,774	1,104	50	325	1,389	1,177	13.
14. Fall River	120,485	42,331	35.1	315	8,628	3,201	126	135	7	2,525	1,661	945	14.

[1] Fourteenth Census of the United States, 1920, III, 40-46, 50-52.

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they are often "little" only in relation to the greater whole.

The effects of heterogeneity

The persistence with which these racial elements cling to their native customs and languages, and the powerful influence of the foreign language press, have been too frequently discussed to justify extensive treatment here. It is enough for our present purpose to call attention to the fact that, in a city made up of many large racial groups only at best imperfectly assimilated, it is impossible to have that concensus of opinion on fundamentals without which genuine democracy cannot function. An attempt, therefore, to secure the support of a majority for any candidate or policy by an appeal to principles is foredoomed to failure, except when city government has become so rotten that it violates those primitive human standards which dominate the thought of all peoples alike. At other times, in the absence of a genuine New York, Chicago or Boston public opinion, majorities are held together by appeals to interest or prejudice. No better illustration of this truth is to be found than the history of Tammany Hall. Its organization, cemented by spoils and graft, attaching to itself a motley array of followers by every variety of personal appeal, has for a century won three out of four New York City elections. Periodically its crimes have accumulated to crush it, but just as inevitably it arises from each defeat as strong as ever. In less degree, perhaps, but for the same reasons, the extraordinary heterogeneity of other American cities serves to impair the functioning of democracy. In those where the foreign element is least strong—i.e., in the Southern states—the presence of great masses of negroes compels the sacrifice of democracy to an accompaniment of evasion or intimidation which tends to react upon the political tone of the ruling class. While it would be impossible to say that the quality of democratic city government varies with the proportion of alien racial elements—Philadelphia, the most American of our

great cities, has had a remarkable record of bad government—there can be no doubt that our extremes of heterogeneity are one of the commonest and most significant obstacles to its success.

The radical tendencies of city populations

It has been frequently observed that city populations are more inclined to be radical in their opinions and violent in their means of pursuing them than are the inhabitants of country districts. Some authors have sought to explain this circumstance by the presence in the city of a larger proportion of young persons—adults of from twenty to forty years of age. There is doubtless in many persons a progression from youth, when one is not content but yet hopeful and therefore a radical, to old age, when one is neither content nor hopeful and therefore a reactionary. But the disproportion of adult youth in city populations is not sufficiently pronounced to account for urban radicalism as contrasted with rural conservatism. A further explanation is, perhaps, to be found in the wider diffusion of the elements of education and the freer communication of ideas which lead to a partial realization of the shortcomings of the social order and to the easy propagation of underdone methods for destroying them. Something may be ascribed to the vividness and rapidity of city life which is constantly separating men from their old traditions and allying them with new associations. Of course, radicalism spreads with infinite slowness in the absence of leaders and, as every species of political leadership is concentrated in cities, city radicalism profits by the circumstance. But, without further searching about for explanations, we will find a sufficient one in the fact that cities are characteristically industrial communities. A large class of industrial workers live up to their wages, occupy rented apartments, rear no family, pay no taxes in forms of which they are aware, shift readily from one employer or from one community to another. If there is any of that spirit of adventure, which we vaguely asso-

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ciate with the reign of Elizabeth, alive today, it is among these wage workers. If there is anything new to be tried, they are ready to try it. That "revolutionary" doctrines have not made greater headway among them in this country is due largely to the fact that they are, as a rule, too prosperous to be bitterly discontented. In European cities, they have widely adopted the most advanced communistic doctrines and constantly menace the established order.

Popular indifference to city government

Of even more effect, if not upon self-governing capacity, at least upon the will to govern, are the multiplied distractions of city life. Government is, in city and county alike, but one of many matters in which men are interested. Everywhere their interest in it varies with the dramatic appeal rather than the intrinsic importance of its issues. That the average citizen regards most of the incidents of municipal politics with indifference is an easily demonstrable fact. It is a rare thing in these days for more than fifty percent of the adult citizens to participate in a city election. At the 1921 election in New York, only 47 percent of the total number of adult citizens voted. It is astounding, but a fact, that half the possible voting population—in round numbers, a million and a quarter out of two millions and a half—of our greatest city do not even take the trouble to enroll as voters. Chicago, at the time of the 1923 election, had approximately 1,460,000 citizens of voting age, of whom 62 percent were registered and 49 percent voted.[1] At primaries, as might be expected, the proportion of voters is even smaller. The 1925 primary in New York, which was characterized by an extremely bitter fight for the Democratic nomination, brought about only 20 percent of the adult population to the polls.[2] Women are, it appears from the analysis of the Chicago 1923 election,

[1] C. E. Merriam and H. F. Gosnell, *Non-Voting* (1924), 26.

[2] The registration for the 1925 mayoralty election in New York was actually less than in 1921 in spite of increase in population.

made by Merriam and Gosnell, greater sinners than men. Of women citizens of voting age, only 46 percent registered and 35 percent voted. The proportions for men were 77 percent and 63 percent. This study goes on to confirm the results of common observation as to the reasons for non-voting. Illness, absence from the city, insufficient legal residence, etc.—which may be called unavoidable—were found to account for less than a third of the non-voters. The remaining two-thirds of the non-voters, whatever their alleged excuse, may properly be lumped in one classification—indifferent. This indifference among city people may be explained in good part by the many interests which compete with city politics for their attention. The contents of the newspaper are a fair basis for estimating the character and relative weight of these interests. Less than two percent of the news columns of the average newspaper are devoted to matters relating to city government and politics.[1] The line-up of the "Giants", the "Pirates", or the "Sox" for the coming year is the subject of endless columns of supposition, report, and comment. No such space is devoted to the probable complexion of the city council. The latest murder, scandal or football game are matters more to the mind of the citizen than the undramatic achievements of the public works department. Under these circumstances, the great public ordinarily leaves the control of politics to a self-selected few. The more numerous distractions of city life help to make this surrender of the function of citizenship somewhat more complete and more continuous in the city, especially the large city, than in the country.

In reaching a conclusion as to the capacity of city people for self-government, it must not be forgotten that

[1] Lida Rideout, *Municipal News in Detroit Newspapers,* Bulletin No. 2 of the Bureau of Government, University of Michigan (July, 1923), found, over a typical 90-day period, that the three Detroit newspapers devoted 2.1 percent, 1.5 percent, and 1 percent of their news space to municipal affairs.

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they enjoy, in certain respects, positive advantages over country dwellers. One of these is physical compactness. Separation by space is an obstacle to the formation of public opinion in the country, as is separation by race in the city. In spite of all the diversities of city population, there is a unity in the city itself which makes for political effectiveness. Elihu Root based his argument before the New York Constitutional Convention of 1894 on behalf of under-representing cities in the legislature on that very point. The educational opportunities available in cities are as distinctly stronger than those in the country as are the opportunities for vice and crime. City schools are usually superior to rural schools and that informal education which comes from contact with many minds is peculiarly a city gift. It would be going too far to say that city people are more intelligent than country people, but they are undeniably better informed. Finally, most of the leaders of thought, even political thought, are themselves city men and women. The quality of a democracy depends in large measure on its leaders who suggest to the mass the ideas which it adopts.

Factors favoring city capacity for self-government

Conclusion

When all the evidence has been weighed it appears that, if democracy on a large scale can succeed anywhere, there are no insurmountable obstacles to its success in cities. Lack of homogeneity can be cured in large measure by wise restraints on immigration. The forces which assimilate and Americanize the foreigner are at their maximum in the city. Another half century —and what is a half century in the life of a city?—will see our cities no more heterogeneous than those of Europe. Indifference to city politics is as much the result of mere size of the community, which makes the processes of government remote, as of the distractions of city life. There is not, nor has there ever been, appreciably more interest in state politics. Agrarian radicalism under various names—Populist Party or Non-Partisan League—has played a more prominent part in

the affairs of this country than the urban radicalism of the Socialist. The population of "up-state" New York may be racially more homogeneous than the population of New York City, but it is without the advantage of compactness which the latter enjoys. To submit the fortunes of the city to the government of the state, therefore, may serve the interest of the political party dominant in the out-state districts, but it does not necessarily mean better government for the city. In fact, it is generally conceded that keeping the city in legislative leading strings has only been productive of confusion and irresponsibility in city government. We will never know what is the capacity of city population for self-government until they have long enjoyed the opportunity of governing themselves.

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The consequences of urban growth are dealt with at length in the works of Weber and Meuriot referred to in the last chapter. Brief treatments of the subject are to be found in F. J. Goodnow and F. G. Bates, *Municipal Government* (1919), 25-43; W. B. Munro, *Municipal Government and Administration* (1923), I, 124-149; W. Anderson, *American City Government* (1925), 131-160.

On non-voting the only thorough and informative study of conditions fairly typical of great cities in America is that of C. E. Merriam and H. F. Gosnell, *Non-Voting* (1924).

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CHAPTER III

THE MULTIPLICATION OF MUNICIPAL FUNCTIONS

Importance of a study of municipal functions

IF the growth of cities has not fatally diminished their capacity for self-government, it has, beyond the shadow of a doubt, vastly increased the number and complexity of the problems with which they must deal. From the close of the seventeenth century, when the first municipal corporations in British North America were chartered, to somewhat past the opening of the nineteenth century, cities grew but slowly in population and in the scope of their activities. The last one hundred years have witnessed a marvelous multiplication of municipal functions, far outrunning the growth of urban population. It is impossible to present understandingly the development of American municipal institutions except against this swelling background of the needs and expectations of city people. We have glanced in the previous chapter at some aspects of the nature of the municipal organism. Without a similar view of the growing functions of that organism it would be futile to attempt a really informing treatment of the problem of municipal government.

Classifying municipal functions

The functions of city government may be readily divided into two groups—those which it exercises on behalf of the central government and those which minister to such local needs as are left to the city alone to satisfy. The first may be called functions of obligation, the second, functions of power or privilege. In other words, the city is a unit in the administration of the state and at the same time an organ for the satisfaction of the purely local wants of its own people. This distinction plays an important part in all discussions of the relation

of the city to the state. Another classification of the functions of city government may be based upon the fact that the city acts not only as a government but as a business corporation. It is difficult to draw a hard and fast line between governmental and business functions. The characteristic method of action of a government, however, is by the issuance and enforcement of commands. A business enterprise sells services or commodities. If we make allowance for the absence of the profit motive and the fact that municipal services are often paid for in advance by taxation, the business character of many of the activities of city government is manifest. Our national and state governments carry on a variety of enterprises of a business nature, but they remain primarily units of governments. By far the greater number of the functions of the modern city, however, are essentially matters of business. In other words, the city as a business corporation overshadows the city as an agency of government.[1] The recognition or nonrecognition of this fact has been determinative of the type of municipal organization fashionable at each period of our history.

Functions of the seventeenth century English city

The functions of the English municipality in the second half of the seventeenth century, when its institutions were first transplanted to this continent, were comparatively few.[2] It owned and managed real estate, regulated the right of persons to practice trades or callings within their limits and maintained markets. Its most significant

[1] See Chap. IV. The courts, in determining the liability of cities for tort injuries, have roughly adopted the distinctions between functions which are governmental and those which are corporate. It is unfortunate that they have not pursued the distinction more logically, but it must be remembered that their object has been something very different from throwing light on the problems of municipal government.

[2] On the English municipalities of the period 1689 to 1835 see Sidney and Beatrice Webb, *English Local Government from the Revolution to the Municipal Corporations Act: The Manor and the Borough*, Two Parts (1908); *Report of the Royal Commission on Municipal Corporations* (1835), the significant portions of which are reprinted in T. H. Reed and P. Webbink, *Documents Illustrative of Municipal Government in the United States;* H. A. Merewether and A. J. Stephens, *History of the Boroughs and Municipal Corporations of the United Kingdom*, 3 vols. (1835).

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power was that of administering justice through its own officers. The extent of the jurisdiction of the courts of which they acted as judges varied from cognizance of petty offences, such as drunkenness or disorderly conduct, to complete jurisdiction over all crimes. Perhaps, as corollary to their judicial functions, the corporation possessed the right to make by-laws, defining nuisances and imposing other obligations on the inhabitants for the common good. Their power of taxation was extremely limited except in the boroughs possessing the right to hold courts of Quarter Sessions of their own, which might levy a rate for maintenance of gaols, keep of prisoners, etc.

Functions of New York under charter of 1686

The first locality in America to achieve a working municipal status was New York. It was granted a charter by Governor Thomas Dongan in 1686, and that document bears interesting testimony to the limited scope of the municipalities of the period.[1] New York was thenceforth to be a corporation with power to "plead and be impleaded", possess a common seal and own real estate or chattels. It was specifically entrusted with the ownership of the existing public buildings and conveniences, including the dock and Long Island ferry, of the unoccupied land on Manhattan Island to low-water mark (a grant of most signal importance), and of the royalties of fishing, fowling, hunting and minerals thereon, and of all streets, lanes, highways and alleys within the city. The mayor, recorder and aldermen were given the power to admit "freemen", and all persons not freemen were forbidden to practice any "art, trade, mystery or manual occupation" or to sell or expose for sale any commodities except at markets. The city was further permitted to establish three market days a week. The mayor and aldermen were given authority to make "laws, orders, ordinances and constitutions" which must not be repug-

[1] The Dongan charter is to be found in *Colonial Laws of New York* (1894), I, 181-195; also in Reed and Webbink's *Documents*.

nant to His Majesty's prerogative or the laws of England and were to be binding for three months only unless confirmed by the governor and council.[1] The mayor was given what was even then the important power of granting licenses for the sale of liquor. This completes the list of the legislative and administrative functions of the city. It is clear enough that they were largely of a business nature. The judicial powers of the corporation, however, were considerable. The mayor, recorder, and not more than five aldermen were made "justices and keepers of the peace". They, or any three of them, the mayor or recorder to be one, were given the jurisdiction of a court of petty sessions dealing with "petty larcenies, riots, routs, oppressions, extortions and other trespasses and offenses". In the case of the more serious crimes, they might commit for trial. On the civil side, the same body was granted the authority to try cases of debt, trespass, trespass on the case, detinue, ejectment and other personal actions. More significant than any of the powers specifically conferred was the absence of any power to levy taxes. This could be done only by the authority of the legislature, and it was only toward the end of the colonial period that the city began to apply itself systematically to this source of revenue.

New York as an example of an eighteenth-century American city

The charter, slightly modified by the Montgomery Charter of 1730,[2] remained in force until well into the nineteenth century. Under it, New York developed the only really vigorous city government of the colonial period.[3] The powers of the city were gradually extended by statute, but throughout the colonial period, the actual practice ran little beyond the bounds set for it by the charter. The records of the courts and the minutes of the common council show the principal activity of the

[1] As a matter of fact, no record exists of the submission of any action of the common council to the governor. The city fathers preferred to re-adopt all their ordinances every three months.

[2] *Colonial Laws of New York*, II, 575-639.

[3] Boston remained a town until 1822, and the corporation of Philadelphia, for reasons explained in Chap. VI, was but feeble.

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city's officers to have been judicial. Next in importance can be ranged the regulation of trade and industry, including the admission of freemen and the management of markets. The administration of the dock and the ferries, the erection of public buildings, the sale of the city's lands took a large part of the time of the council. Police protection was supplied first by constables elected in each ward supplemented by a "watch" sometimes composed of paid members and sometimes of citizens turn and turn about. It was not until 1762 that, the legislature having authorized a tax for that purpose, a permanent paid "watch" was established under the command of an experienced overseer. In 1774 the force consisted of sixteen full time and eight part time employees. Until 1761 street lighting had been regulated only by an ordinance requiring every seventh house to hang out a candle on a pole. In that year, lamp-posts were erected at public expense, and the city thenceforth attempted to provide lamps, oil and men to care for them. There were very few lamps and they were not lighted for months at a time.

The first attempts at fire protection took the direction of ordinances and laws prescribing the method of construction of buildings and punishing householders for neglect causing fire. The first fire apparatus consisted of a set of leathern buckets, purchased by the city and distributed among the citizens whose duty it was to report at every fire, bucket in hand. In 1731, the first fire engine (a hand pump) was imported from England and shortly thereafter volunteer fire companies made their appearance. The city housed the engines in sheds and employed an overseer to look after them. Each company chose its own foreman, but when actually engaged in fighting flames, all were under the command of a chief, appointed by the city council.

A few of the streets were paved with cobbles. This was done on the direction of the council, and at the ex-

pense of the abutting property owners. In the center of each paved street ran the "channels", which served all the purposes of a modern gutter, with additions. Street cleaning was carried on within the most thickly built up district by a municipal scavenger. Beyond his boundaries, the property owner was supposed to do the cleaning, and "carmen" or cartmen were depended upon to carry away the refuse at a fixed price per load. All too frequently filth accumulated without protest or effort to remove it. There were some rudimentary sewers for drainage purposes only—the sanitary sewer was apparently unknown to our colonial ancestors. Water was supplied by public and private wells and pumps. To the digging of the former, the city sometimes contributed and in all cases exercised a supervisory power as to location. The first reservoir, with a capacity of 20,000 hogsheads, was begun just before the Revolution. It was ultimately completed and supplied with water from a nearby well by means of one of the first steam pumps in America. To sum up, prior to the Revolution many of the primary functions of a modern city were, it is true, already in evidence, but in very rudimentary forms.

The development of municipal activities to 1850

The eighteenth-century city, whether in England or America, was, aside from its judicial duties, primarily a business corporation. Post-revolutionary America came to regard the city rather as a unit of government and to model its institutions on those of the state and nation. These changes, however, had no appreciable effect upon the actual activities of cities. It was not, in fact, until nearly if not quite the middle of the nineteenth century that cities began to take on their modern aspect. Professor Munro [1] quotes an extremely illuminating statement from President Charles W. Eliot (born in 1834) of Harvard, concerning conditions in the Boston of his boyhood, "There was no public water supply. Water for household use was brought in buckets from neighboring

[1] W. B. Munro, *Municipal Government and Administration*, I, 99.

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wells. There was no sewer in the whole town and no pavement except a cobblestone pavement in a few of the principal streets. There were no street lights to speak of,—only a few scattered whale-oil lamps. Protection against fire was afforded by a hand pump and a voluntary bucket brigade."

An examination of the annals of many cities for this period only leads to the conclusion that, with slight modification, this description will do for almost any of them. Boston lagged, it is true, in the matter of a public water supply, which it did not actually achieve until 1848, being antedated in this matter even by the cities of the young West, like Chicago (1842) and Detroit (1835). As to sewers, President Eliot's recollection presents a slight exaggeration. There were sewers in Boston and most other sizeable American cities of the time. They were, however, scattered and inadequate, constituting not even a faint approximation of a real sewer system. Illuminating gas as a means of lighting streets was made practicable at the beginning of the nineteenth century and was first extensively applied in lighting the streets of Westminster (London) in 1814. Baltimore was apparently the first city in America to take advantage of the new discovery, a company having been organized in 1818 which actually got in operation about 1820. The subsequent spread of gas lighting was by no means rapid, the system being adopted in New York in 1825, in Philadelphia in 1838, and in Chicago in 1850. Fire protection continued everywhere in the United States to be supplied largely by volunteer fire companies until past the middle of the century. Extinguishing fires by buckets and hand pumps required a great deal of man-power. The companies were large, numerous and politically powerful. Their lack of discipline and tendency to riotous disagreement with one another were a constant source of trouble, but they were displaced only by the perfection, about 1855, of the steam fire engine, which required for its

management a few trained hands rather than a multitude of merely muscular arms and backs. St. Louis created a paid fire department in 1857, Baltimore in 1858, New York in 1865. In these early fire departments, only a portion of the force was employed on a full-time basis. Philadelphia, for example, did not establish a full paid fire department until 1870. Paving was confined to a few of the principal streets and attempts at street cleaning were exceedingly primitive. In general, it may be said that, while most of the primary activities of the modern city had made their appearance by 1850, they were as yet largely undeveloped.

Recent multiplication of activities

It is since 1850 that most of the activities of the present day city have come into being. Dr. L. D. Upson, in the only published study of this subject, has endeavored to list all the activities of Detroit with the dates of their inception, from 1825 to 1921.[1] The activities total 184. Of these, only twenty were established prior to 1860. Equally striking is the fact that the rate of increase in the number of activities has been greater in the later than the earlier years, more than half of them having come into being in the nineteen years, 1903 to 1921. In a general way the same fact is true with regard to every other city. It is to be accounted for in part by the growth of city population. In 1850 there were but six cities of over 100,000 inhabitants in the United States, with an aggregate population of 1,393,338. In 1920 there were 68, with a total population of 27,429,326. In 1850 there were 2,766,870 people living in the 66 cities of over 10,000. In 1920 there were 746 such cities, housing 44,712,856 persons.[2]

It would be quite wrong, however, to assume that the

[1] "The Growth of a City," *Public Business*, Detroit, No. 70 (June 1, 1922), and "Increasing Activities and Increasing Costs," *National Municipal Review*, XI, 317-320 (October, 1922).

[2] These figures are compiled for 1850 from A. F. Weber, *Growth of Cities in the Nineteenth Century*, 40, and for 1920 from the census returns for that year.

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Influence of scientific progress and expanding ideals of social service

multiplication of municipal activities in recent years is altogether a matter of the growth of new needs arising from the crowded conditions of urban life. It is as much the result of two other causes: (1) the progress of science and (2) expanding ideals of social service. Only rarely, as in the case of the steam fire engine, have new scientific discoveries or applications resulted in the simplification of a municipal service. Either working alone or in conjunction with a broader social vision, they have piled new city service on new city service. Ninety years ago the people of Detroit knew no better than to pump the water of the Detroit River into their mains untreated. Today an informed public opinion demands that it be filtered and millions of dollars are spent in the erection of enormous batteries of filter beds. In 1850 milk was milk. Today it is "certified milk", "grade A milk", "grade B milk", etc., and every circumstance of its production is carefully watched by inspectors. The automobile has brought the traffic squad. Electric light has brought the demand that every street be illumined from end to end for every night in the year. We are no longer content that the poor shall crowd in rotting, unsanitary tenements. As a result, we have housing codes and tenement house inspectors. The modern municipal conscience requires schools and playgrounds in a profusion which would have astounded our great-grandfathers. Developing æsthetic sensibilities demand beauty in public buildings and a lavish expenditure on parks and boulevards. The list might be made endless. Every year our cities go in for more tuberculosis camps, schools for defectives, psychological clinics. Next year may bring new activities not yet suspected.

An illustration

The expansion of a single department, as shown by Dr. Upson's study, may be taken as illustrative of what has taken place in all the older branches of municipal service. There were police of a sort in Detroit in 1824, which gradually evolved into a uniformed and disciplined

force. Then came the Detective Bureau in 1867; signal system, 1869; harbor police, 1871; criminal identification, 1882; mounted police, 1893; police medical service, 1904; motor police, 1909; traffic police, 1910; police training school, 1912; property identification bureau, 1913; police record bureau, 1915; auto recovery bureau, 1917; vice squad, 1917; women police, 1920. When we also take into account that there are numerous wholly new departments, such as "parks" and "recreations", which had no counterpart in the administrative organization of the city, some faint comprehension of the multiplicity and complexity of the functions of the modern city may be had.

Internal functions

All this development of the external activities of the city has necessarily carried with it a like prodigious increase in what may be called internal functions—functions which do not themselves directly serve the public, but which contribute to the efficiency of those that do. At the head of the list must be placed the whole apparatus of financial administration—assessment, tax collection, accounting, etc., whose successful operation is a fundamental necessity of any city government at all. Next in importance comes personnel administration, for which purpose civil service commissions are now established in practically all the larger cities. Their work properly includes not only the examination of applicants for appointment, but the keeping of efficiency records, recommendations for promotion, etc. Many cities have established centralized purchasing systems. Transportation service for all departments is sometimes undertaken, and all cities of any size maintain garages, storehouses, repair shops, etc. The heating and janitoring of public buildings is a considerable task in large communities. Some cities even maintain restaurants and special recreational opportunities for municipal employees.

In all this increase of functions the city has not lost,

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Functions of the city more predominantly of a "business" character than ever

but has rather intensified, its predominantly business character. From this point of view, the method of administering a function is of more consequence than its often remote, though fundamental, purpose. The removal of tonsils, adenoids and bad teeth from school children, for example, is with the ultimate intention of promoting public health, which is clearly within the police function of the state and "governmental" if anything is. This function, however, is carried on by the employment of doctors and nurses who render service to individual children. To put it in another way, the city buys this service for its children—certainly a business process. The characteristic form of action of the municipality is buying things or service for its people—sewers, parks, water works, police protection, fire protection, education, etc. The city "legislates" chiefly in the sense of determining what structures and services to have and how much money to spend for each structure or service. Its police regulations are, of course, legislation but, with a few exceptions such as zoning ordinances, franchises, etc., relate to minor details of conduct. It lays down no broad principles of human conduct nor adopts policies of far-reaching consequence, as do state and national legislatures. The fact that the activities of the city are primarily of an administrative and business nature brings it to pass that they do not invite a division into permanent parties, such as appear in national politics. This does not mean that the democratic conduct of city business is possible without politics in the broadest sense of that term. It is, however, politics in which personalities are almost invariably more important than issues. Furthermore, the issues, which usually relate to the adoption of concrete projects, are seldom the same from one election to another. Each new issue is the occasion for a new alignment of public opinion. This impossibility of developing permanent municipal parties has curiously had

the effect of encouraging national party activity in city politics.[1]

REFERENCES

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Two good monographs on eighteenth-century New York have appeared in the Columbia University Studies in History, Economics and Public Law (1917), Vol. 75: A. E. Peterson, *New York as an Eighteenth Century Municipality Prior to 1731,* and G. W. Edwards, *New York as an Eighteenth Century Municipality, 1731-1776.* Both deal at length with the activities of the city. A general account of the functions of colonial municipalities will be found in J. A. Fairlie, *Essays in Municipal Administration* (1908), 75-94. A brief review of city government in colonial Philadelphia is given in E. P. Allinson and B. Penrose, *The City Government of Philadelphia,* Johns Hopkins Studies in Historical and Political Science, Fifth Series, Nos. I and II. A long account by the same authors was published by Johns Hopkins as Extra Volume II of the "Studies," under the title *Philadelphia 1681-1887, A History of Municipal Development* (1887). The records of the colonial city councils of Philadelphia and New York have been reprinted in convenient form, *Minutes of the Common Council of the City of Philadelphia, 1704-1776* (printed by order of the Select and Common Councils of the City of Philadelphia); *New York, 1674-1776* (published under the authority of the City of New York), 8 vols. (1905).

For the period 1800-1900 the principal sources of information are the histories—"chronicles" they are sometimes called—of particular cities, for which see W. B. Munro, *Bibliography of Municipal Government,* 8-13.

The current activities of municipalities are discussed *in extenso* in standard texts on municipal administration, especially L. D. Upson, *The Practice of Municipal Administration in the United States* (1926).

[1] See Chap. XIII.

CHAPTER IV

THE BEGINNINGS OF CITY GOVERNMENT IN THE UNITED STATES (to 1800)

Significance of colonial city government

IT must be obvious to the reader of the preceding chapters that there was small opportunity for the development of municipal institutions in the United States during the colonial period. There were but three places really deserving of the name of city—Philadelphia, Boston, and New York.[1] Of these, Boston was in no wise distinguished in the matter of government from the other towns of Massachusetts. Not only were cities few and small, but the pressure of social needs and the progress of invention had not yet developed that multitude of services which in these days even small cities render to their people. From these points of view we might be justified in passing over the colonial period with a hasty word. There seems but little connection between the institutions of the Anglo-Dutch village which at the beginning of the eighteenth century clung to the lower end of Manhattan Island and those of the great metropolis which today spreads its millions over a dozen counties and parts of three states.[2] Nevertheless, there is something more than sentiment behind the symbolism which represents modern New York as "Father Knickerbocker". In a very real sense, the child was "father to the man"—the infant cities of the colonial era were not

[1] According to the bulletin of the Bureau of the Census entitled *A Century of Population Growth* (1909), the population of these three cities was as follows:

	1700	*1760*
New York	4,500	14,000
Boston	6,700	15,631
Philadelphia	4,400	18,756

[2] See Plan of New York and its Environs, *Report of Progress* (1923).

merely the forerunners of the great cities of today, but they determined the paths over which the progress of centuries was to be made. This is true not only in matters local to particular cities, such as New York's ownership of its waterfront, but of the general character of municipal organization throughout English-speaking North America.

English borough government in the seventeenth century

No truism has been oftener repeated than that the settlers of the English colonies brought with them ready-made their ideas of government and law. In some cases, they modified them to meet the conditions of the new world, but in the creation of municipal corporations, they copied mother country models with no touch of originality. In England, at the close of the seventeenth century, there were some two hundred boroughs which might be classed as municipal corporations. Based at least theoretically on grants or "charters" emanating from the king, they had the right to enjoy perpetual succession, to sue and be sued, to own and administer property and to possess a common seal—the usual privileges of corporations private as well as public. Such other powers as they possessed were derived from royal grant, prescription or Act of Parliament. The governing body of this corporation was normally a council consisting of the mayor, as president, and two grades of councilors—aldermen and common councilmen.[1] They sat together in one body, the mayor and aldermen distinguished in rank, but not in power—except as mayor and aldermen were also magistrates—from their colleagues. In more than two-thirds of the municipal boroughs, the members of the council held office for life and all vacancies were filled by coöption. In a few boroughs, including most of those which at that period were really populous, they were chosen by a large body of "freemen" or members

[1] There was a great deal of variation in the titles of officials and the details of organization from borough to borough. It is the purpose of this account merely to set forth the chief characteristics of the system.

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of the corporation. The mayor, recorder and other chief officers of the borough were chosen from among the members of the council, as a rule by that body, but in some instances by the freemen. The mayor, recorder and some or all of the aldermen were endowed with those judicial functions referred to in the last chapter. Such executive authority as the council was required to wield was usually entrusted to committees of that body. The mayorship was an office of great dignity, and the mayor, if he chose, might exercise a great influence over his colleagues, and authority in the community. The fact, however, is that the municipal governments thus organized were lacking in vigor, and destined to a rapid decline in character and achievement during the eighteenth century. Except for their place in the judicial system through which most of the "administration" of that day was carried on, they were, with few exceptions, already little more than mechanisms for the management of corporate property and the protection of corporate trade privileges.

Significance of corporate character of seventeenth and eighteenth century city

The fact that the seventeenth and eighteenth century muncipality existed for *corporate* rather than *governmental* purposes is one of great significance. Without taking account of it, no one can grasp the distance which American conceptions of the scope and purpose of municipal organization have traveled. The cities of Great Britain and of the continent which had, with few exceptions, lost their medieval independence, have continued to adhere to the conception of the municipality as primarily an institution for the corporate management of certain community interests. This accounts for the apparent anomaly of their vigorous initiative in the promotion of business enterprises, coupled with their graceful acceptance of administrative control by agents of the state in matters more strictly governmental. In America we came, in the days succeeding the Revolution, to regard the city as just another unit in our system of popular

government. We organized it like a miniature republic and conducted its affairs by means of partisan politics. It is only in the present century that we have begun to emphasize once more the business aspect of the city.

Municipal charters in the colonies

In all, twenty-four municipal charters were granted during the colonial period.[1] Seven of these, however,

[1] A brief, but comprehensive, account of the colonial municipalities is to be found in J. A. Fairlie, *Municipal Corporations in the Colonies*, first published in Municipal Affairs, II, 341 (September, 1898), and reprinted in J. A. Fairlie, *Essays in Municipal Administration* (1908). J. S. Davis, *Essays in the Earlier History of American Corporations* (1917), I, 49-74, presents the results of a more intensive study of the mere fact of incorporation. See also, Henry Wade Rogers, *Municipal Corporations*, in the Yale bicentenary volume, *Two Centuries' Growth of American Law* (1901). The boroughs incorporated with the effective dates of their first charters are as follows:

Agamenticus, Me.	1641	Williamsburg, Va.	1722
New York, N. Y.	1652	Charles City, S. C.	1722
St. Mary's City, Md.	1667	Newcastle, Pa.	1724
Albany, N. Y.	1686	New Brunswick, N. J.	1730
Germantown, Pa.	1691	Burlington, N. J.	1732
Philadelphia, Pa.	1691	Norfolk, Va.	1736
Westchester, N. Y.	1696	Wilmington, Del.	1739
Chester, Pa.	1701	Elizabeth, N. J.	1740
Bath, N. C.	1705	Lancaster, Pa.	1742
Annapolis, Md.	1708	Trenton, N. J.	1746
Perth Amboy, N. J.	1718	Wilmington, N. C.	1760
Bristol, Pa.	1720	Schenectady, N. Y.	1765

The careers of several of these incorporations were very brief. Agamenticus (or Georgiana) became the town of York upon annexation by Massachusetts in 1652. St. Mary's disappeared after the removal of the provincial capital to Annapolis in 1694. Germantown forfeited her charter for "non-user" in 1707. Charles City relapsed into Charles Town, when her legislative act of incorporation was invalidated by the Lords in Council in 1723. Trenton surrendered her charter in 1750. There is no record of any activity under the charters of Newcastle and Schenectady. Fairlie mentions two incorporations not in the above list, Kittery (1647), which incorporation is doubtful and was never operative, and Richmond, 1742, which seems to have been simply an error. St. Mary's, Charles City, Newcastle, the two Wilmingtons and Schenectady are referred to by Davis, but not by Fairlie. The date of incorporation of New York is here given as 1652, when "New Amsterdam" was provided by the States-General with a government and privileges modelled on those of the mother city. There is little doubt that New York enjoyed corporate capacity from this early date. 1686, however, when Governor Dongan granted the first formal charter, and from which date the records of the common council have been preserved continuously, more properly may be taken as the real beginning of city government in New York. The date of the Germantown incorporation is here given as the date of its passage under the Great Seal of the Colony, 1691, on the authority of the charter itself, as set forth in S. Hazard, Pennsylvania Archives, Philadelphia, 1852, 111-115. The date of the Westchester charter is fixed at 1696 on the authority of the charter granted in that year by Governor Fletcher. (See *History of Westchester County*, II, 301-310). Professor Fairlie says, "The colonial laws of New York show

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were so short-lived as to be of no practical importance. Several others were for communities which never acquired, in the period under discussion, any genuine title to be called urban. There were no permanent incorporations in New England and none south of Virginia except the hamlet of Bath, North Carolina, and just at the close of the period, Wilmington, in the same state. Omitting Agamenticus and St. Mary's, both of which died in infancy, colonial charter making began with New York in 1686, while no charter was put in operation after 1760. These charters emanated from the crown, i.e., the governor or proprietor, who was its representative in the colony. They were, however, not infrequently in effect amended by acts of the colonial legislatures. They commonly vested the government of the municipality in a council consisting of mayor, recorder, aldermen, and assistant aldermen or common councilmen. All sat together in a single body, aldermen being distinguished from assistant aldermen, etc., only by their title and the possession of judicial powers. The mayor, recorder, and aldermen were, as a rule, justices of the peace for the borough and collectively held courts of civil and criminal jurisdiction. The councils were sometimes self-perpetuating and sometimes elected by a restricted suffrage. No more minute general description is possible because of the great variety in the titles of offices and the powers ascribed to them. It will be more to the purpose to describe in some detail the organization of the two most important of them, New York and Philadelphia.

The government of New York

1. The mayor and common council

The common council of New York consisted of the mayor, recorder, and, after 1730, seven aldermen and seven assistant aldermen. The aldermen and assistants were elected annually from the six wards (two from the

that Westchester was a town as late as 1700, but was a borough by 1705." This apparent contradiction may be accounted for by the fact that the charter creates Westchester "a free borough and town corporate" which shall be called the borough and town of Westchester." Bath, which is mentioned by Fairlie, but not by Davis, is included on the authority of F. L. Hawks, *History of North Carolina* (1858), II, 85.

outer ward) into which the city was divided. The elective franchise was possessed by "freemen" and by such other adult male citizens as owned freehold estates of the value of £40. Voting was *viva voce* and elections were frequently accompanied with charges of bribery and other corrupt practices.[1] Conclusive figures are lacking, but it is doubtful whether the number of persons voting in borough elections ever much surpassed one in a dozen of the white population. The mayor and recorder were appointed annually by the governor. Reappointment was common, there having been but eight mayors and six recorders in the forty-five years from 1731-1776. To this body, under the presidency of the mayor, were entrusted most of the non-judicial powers of the borough. Within the narrow scope of its authority, it was both legislative and executive, the latter phase of its activity—such matters as leasing the dock, paving a street or erecting a public building—being usually entrusted to committees. After 1750 the council adopted the policy—hard to uproot and afterwards productive of much evil fruit—of naming the alderman of the ward in which "any matter or thing" was to be done, chairman of the committee concerned.[2] The mayor was in general a person of wealth and social distinction, and at the time of his appointment, an alderman. He had no general executive authority. As presiding officer of the common council, he possessed a casting vote in case of tie. He appointed a few of the lesser officers. Perhaps his most interesting power was that of granting licenses for the sale of liquor. He was also Clerk of the Market and Bailiff and Conservator of the waters of the North and East Rivers. The latter was a duty ordinarily much neglected but extensive enough to warrant his enforcement of a quarantine in time of a smallpox epidemic. At the outset, he received no salary, but customarily

[1] Edwards, *op. cit.*, 45 *et seq.*
[2] *Ibid.*, 31.

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pocketed the fees charged for liquor licenses and in connection with his work as clerk of the market. The council sought to recover these fees for the benefit of the borough treasury, but the mayor successfully resisted until 1762, when the matter was settled by allowing him £125 annually, in lieu of his fees as Clerk of the Market and four shillings out of each liquor license.[1]

2. The recorder

The official next in importance to the mayor was the recorder. He was always a lawyer and served as attorney for the corporation, giving legal advice and preparing cases for trial. He was member of the council and, in the absence of the mayor, might summon it and preside over its sessions. The town clerk—another gubernatorial appointee and, like the recorder, always a lawyer—was the clerk of the common council and of the borough courts. From 1692 to 1776 there were only three incumbents of this office, a remarkable record for a position filled by annual appointment. Of the other important officers, the Sheriff was appointed by the Governor, the High Constable by the mayor and the Chamberlain or treasurer, by the common council.

3. Legislative meddling

That legislative meddling in charter matters and other city affairs, which has since been carried to such excess that the statutes affecting New York City cover thousands of pages, had its beginning in the colonial period. In the first place, the borough having no power to levy a tax, had to resort to the legislature for every expenditure which could not be met out of the sale of lands, the proceeds of its docks, ferries, markets and fees for the admission of freemen, liquor licenses, etc. Thus was laid the foundation of the bad habit of looking to Albany for the solution of every little city problem. The legislature was ready, too, with numerous measures relating to non-inflammable roofs, firemen and fire engines, roads, bridges, pumps, wells and rates on ferries. In the colonial assembly, the borough of New York had only four

[1] *Minutes of the Common Council,* VI, 359-360.

representatives out of twenty-seven—a precedent for over-representation of the rural districts which has persisted to this day.

The government of Philadelphia

Philadelphia received her first charter from the proprietor William Penn in 1691. Next to nothing, however, is known of the working of that instrument. In 1701, a new charter was granted, which remained in force until after the Revolution.[1] The Penn charter differed from those of Dongan and Montgomery in creating a close corporation. All corporate powers were bestowed upon a mayor, recorder, eight aldermen and twelve common councilmen, named in the document. Henceforth, the mayor was to be chosen annually by this body from among the aldermen. The recorder, aldermen and common councilmen were to hold office for life, vacancies being filled by the council, which likewise possessed the power of removing the mayor and other members and of adding to the number of aldermen and councilmen. It is difficult to determine, from the incomplete and scanty records of the Philadelphia Council, what the exact number of its two classes of members were. The records of three meetings, however, purport to give the whole number of members (present and absent). December 25, 1718, the number is set down as 10 aldermen and 20 common councilmen,[2] while on December 29, 1718, and April 6, 1719, it is set down as 11 aldermen and 27 councilmen.[3] The largest number of aldermen ever recorded as present was twelve and the largest number of councilmen was thirty-two.[4] The average of attendance fell

[1] A record of the activities of this corporation is to be found in *Minutes of the Common Council of the City of Philadelphia, 1704-1776*, printed by order of the Select and Common Councils of the City of Philadelphia (1847). See also E. P. Allinson and B. Penrose, *Philadelphia* (1887), and a briefer work by the same authors, *The City Government of Philadelphia*, Johns Hopkins University Studies in Historical and Political Science, Fifth Series, Nos. 1 and 2.

[2] *Minutes*, p. 158.

[3] *Minutes*, pp. 160 and 162.

[4] August 31, 1771, and October 2, 1750, respectively. *Minutes*, pp. 764 and 531.

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markedly below these maximum figures. The Philadelphia council functioned in much the same manner as did its New York contemporary, performing such executive tasks as it had through committees. Due probably to its undemocratic organization, the new services which the growth of the city entailed were not entrusted to the corporation, but to specially created bodies. In this respect, Philadelphia's experience duplicated that of many of the English boroughs of the same period. The city of Philadelphia possessed no power of taxation. In 1712, when it became necessary to resort to taxation for the purpose of paying the debts, building a workhouse, repairing public wharves and laying out and paving streets, a statute was passed creating a board of six assessors *elected by the people,* who, in conjunction with the mayor, recorder and aldermen, were to determine annually the sums to be raised and levy taxes to meet them. This method of handling the street problem was not satisfactory, but nothing was done to remedy it until 1762, when another commission of six was provided to work with the assessors. In the meantime, a body known as the City Wardens had been created in 1750 to have charge of lighting and watching. Control of pumps (the water supply of the time) was given them in 1756. After 1736, fire protection was in the hands of independent fire companies, which received no assistance from the corporation until near the close of the colonial period.[1] An examination of the minutes of the common councils of New York and Philadelphia sufficiently demonstrates the comparative inactivity of the latter corporation in spite of the fact that Philadelphia was, in the colonial period, the larger and more flourishing community. Legislative interference ran a more destructive course in Philadelphia than in New York—in part, perhaps, because Philadelphia was the capital of the province and

[1] 1770. See Scharf and Westcott, *History of Philadelphia,* I, 262.

in part because its undemocratic constitution rendered the legislature loath to extend its corporate powers.

Post-revolutionary charter changes

Independence brought at once no revolutionary change in city government. The power to grant charters of incorporation passed, as has been seen, from the governor to the legislature, so that henceforth the legislatures, in the absence of specific constitutional provisions to the contrary, possessed plenary authority over both the form and functions of city government. They set out to use their powers with considerable vigor. For nearly thirty years prior to the Revolution only one new effective incorporation had taken place. In fact, in 1775 there were probably not over seventeen active municipalities. All those in Pennsylvania and New Jersey, nearly one-half the whole number, were held to have lapsed as a result of the cessation of royal authority. Altogether, from 1779 to the end of the century, there were enacted thirty-nine charters, or radical charter revisions. All but eight related to places not previously incorporated, and two of the eight, those of Charleston and Trenton, were not actually going municipal corporations at the time of the Revolution. One charter, that of Newport, was repealed soon after its passage. We may conclude, therefore, that there were about fifty incorporated places (cities and boroughs) in the United States at the beginning of the nineteenth century.[1]

[1] Charters or fundamental revisions, 1776-1800:

1779	Alexandria, Va.	1785	Hudson, N. Y.
	Winchester, Va.		Reading, Pa.
1781	Fredericksburg, Va.	1787	Norfolk, Va.
1782	Richmond, Va.		York, Pa.
	Carlisle, Pa.	1789	Philadelphia, Pa. (amended 1792, 1796 and 1799)
1783	Charleston, S. C.		Easton, Pa.
1784	New London, Conn.		Elizabeth, N. J.
	New Haven, Conn.	1790	Savannah, Ga.
	Hartford, Conn.	1791	Harrisburg, Pa.
	Middletown, Conn.		Paterson, N. J.
	Norwich, Conn.		Camden, S. C.
	New Brunswick, N. J.	1792	Trenton, N. J.
	Newport, R. I.	1794	Pittsburgh, Pa.
	Perth Amboy, N. J.	1795	Bedford, Pa.
	Burlington, N. J.		Lewistown, Pa.

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On the whole, these charters stuck rather closely to colonial precedents. The close corporation type promptly disappeared, but a restricted suffrage, a limited range of powers, and in some cases appointment of important officers by the state authorities remained features of city government. It is true that some of the tendencies which were to operate throughout the nineteenth century manifested themselves,—independent election of the mayor, bicameral council, mayoral veto, etc. In general, however, the council continued to be the source of all municipal authority, and the doctrine of the separation of powers, so influential in determining the form of state and national government, affected directly the frame of government of only two of the larger cities. A tendency to separate judicial functions from city government became evident. Magisterial authority in mayor and aldermen remained the rule, but by no means the universal rule. Long and detailed statements of the powers of the corporation appeared with increasing frequency. This was only a natural consequence of the fact that, while the powers conferable by royal charter were limited, those which the legislatures could grant were unlimited, and the legislatures knew no method of properly defining powers except by their minute specification.

Charters in Virginia and Connecticut

The legislatures of Virginia, Connecticut, New Jersey, and Pennsylvania developed a type of charter of which each granted several during this period. The Virginia type (Alexandria, 1779; Winchester, 1779;[1] Fredericksburg, 1781;[2] Richmond, 1782)[3] was democratic in spirit and simple in structure. The "freeholders and house-

1796	Huntingdon, Pa.	1798	Schenectady, N. Y.
	Uniontown, Pa.		Augusta, Ga.
	Baltimore, Md.	1799	Greensburg, Pa.
1797	Sunbury, Pa.		West Chester, Pa.
			Lebanon, Pa.

As early as 1779, Chester, Bristol and Lancaster, Pa., were authorized by statute to proceed under their charters.

[1] 10 Henning's *Statutes at Large*, 172.

[2] *Ibid.*, 439.

[3] 11 *Ibid.*, 45.

keepers'' chose annually twelve ''fit and able men''. These twelve chose from their own number a mayor, recorder, and four aldermen. The remaining six were to be councilmen. The mayor, recorder, and aldermen possessed important judicial powers and in other respects colonial traditions were maintained.

Connecticut incorporated her five principal towns in 1784.[1] The new cities did not include all the area of the towns of the same name of which for certain purposes they remained part—a situation which afterwards produced serious complications.[2] The principal organ of city government was a meeting of all the ''freemen'' which elected the mayor, four aldermen, and not more than twenty councilmen.[3] It further chose the other principal officers of the city, and alone could lay taxes. Ordinances adopted by the ''court of common council'' (mayor, aldermen and common councilmen) went into effect only after its approval. The principle of central control was manifested in the provision that the mayor should hold office during the pleasure of the General Assembly. All other officers were elected annually. City ordinances might be invalidated within six months after their adoption by any Superior Court ''holden'' in the county.

The Newport charter

In the same year, the legislature of Rhode Island granted a somewhat similar charter to Newport, except that the mayor was to be elected annually by the meeting of freemen. The council, by itself, could pass ordinances relating to a long list of subjects, appoint town officers and levy taxes to pay the debts of the city and provide ''for the safety, convenience, benefit and advantage of

[1] *Acts and Laws of the State of Connecticut in America.* (Hartford, 1796), Hartford, p. 61, Middletown, p. 73, New Haven, p. 83, New London, p. 95, Norwich, p. 105.

[2] See C. H. Levermore, *The Republic of New Haven,* Johns Hopkins University Studies in Historical and Political Science, Extra Vol. I (1886).

[3] ''The list was soon reduced to ten, it was increased to twelve, then to fourteen, and in 1853 the original membership was restored.'' Levermore, *op. cit.,* 232.

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the city, as shall appear to them expedient."[1] Such a concentration of power was too much for the public opinion of the day. Hence the act incorporating Newport was repealed in 1787. The grounds of the repeal, as set forth in the petition to the legislature of "divers inhabitants" of the city, are a remarkably clear expression of a type of political thought which has often determined the character of our municipal institutions and still persists in a large section of the public. It declares that "the people have experienced many inconveniences and indignities, unknown to them before said incorporation, injurious to their property and civil liberty, and incompatible with the rights of freemen; that the choice of the mayor, aldermen and common council is effected by a few leading, influential men, who, when chosen, have the appointment of all the city officers, independent of the suffrages of the people, which they conceived to be a derogation of those rights and immunities which freemen are indisputably entitled to and for which so much blood and treasure has been exhausted; . . . and that they were told that the city mode of government would be economical, and much less expensive; in which they have been deceived, as the mayor has the same salary as the governor, and the wardens and other officers receive more money for their services in proportion than the whole judicial power of the state united". . . .[2]

New Jersey boroughs

New Jersey found it necessary to reincorporate all of her colonial boroughs. The first of these acts (September, 1784) gave to New Brunswick a government rather of the Connecticut type. The freeholders in annual meeting chose a president, register, four directors, six assistants, a marshal, assessor, collector, and other officers. The president, register, directors, and assistants constituted the common council, which possessed the

[1] *Records of the State of Rhode Island and Providence Plantations in New England* (J. R. Bartlett, ed., Providence, 1865), X, 30.
[2] *Ibid.*, p. 233.

ordinary powers of a colonial municipality. Taxes could be voted only by the freeholders in meeting.[1] Before the end of the year, however, centralizing and conservative tendencies had taken hold of the legislature, which modified all the other charters of this period, Perth Amboy (1784), Burlington (1784), Elizabeth (1789), Paterson (1791), and Trenton (1792). In all of them, while the size of the councils and the titles of officials varied, the mayor, recorder, aldermen and other members of the council were appointed by the council and general assembly of the state for a term of five years. The other officers, with few exceptions, were appointed by the annual meeting. The powers of the several cities varied a good deal. In one, Burlington, the legislature formally reserved the right to amend any ordinance.

The Pennsylvania boroughs

Another large batch of charters for which a single description will suffice comprised those of the dozen boroughs incorporated in Pennsylvania.[2] In that state all charters issued by the proprietor were deemed to have lapsed with the Revolution. As early as 1779, the boroughs of Chester, Bristol and Lancaster were authorized to elect burgesses and other officers as provided in their charters.[3] In 1782 Carlisle was given a government on the same model. An annual meeting of the freeholders and inhabitant housekeepers (where house and grounds were of the yearly value of £5) elected two burgesses, four assistants, a constable, and a clerk. The burgesses and assistants constituted a sort of borough council, but their powers were largely executive and judicial, the power of making ordinances remaining in the town meeting. With some variation in the number of burgesses and assistants, the organiza-

[1] William Paterson, *Laws of the State of New Jersey Revised and Published under the Authority of the Legislature* (Newark, 1800), 57-58.

[2] Carlisle (1782), Reading (1785), York (1787), Easton (1789), Harrisburg (1791), Bedford (1795), Lewistown (1795), Sunbury (1797), Huntingdon (1796), Uniontown (1796), Greensburg (1799), West Chester (1799), Lebanon (1799). See *Statutes at Large of Pennsylvania*, 1682-1801.

[3] *Ibid.*, IX, p. 44.

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tion of all the boroughs of the time was similar. One of the burgesses was designated as Chief Burgess, who presided over that body and enjoyed added dignity and responsibility without definite additional power. The suffrage was progressively liberalized in the successive charters, and by the close of the century the ordinance power and a qualified taxing power were usually conferred on new borough councils.

Hudson and Schenectady

Hudson was chartered by the New York legislature in 1785, and Schenectady in 1798. The Hudson charter was based directly on those of Albany and New York. The mayor, recorder, clerk, and marshal were to be appointed by the governor and council of appointment, and no general power of taxation was conferred on the corporation. The only departure from colonial precedent was in the minute specification of the powers of the city and in the fact that the four aldermen and four assistants were to be elected at large.[1] The charter of Schenectady (1798) differed from previous New York charters in conferring no judicial power on the aldermen, while that of the mayor was reduced to taking acknowledgments and proving deeds. The aldermen and assistant aldermen, eight of each class, were elected from the four wards. The powers of the council were couched in general terms and did not include the right to lay a tax.[2]

Southern charters

Prior to the Revolution, no city had been chartered south of Virginia. Charles Town, South Carolina, although a place of growing commercial importance, remained, except for the brief period of its legislative incorporation (1722-1723), merely a collection of parishes under the immediate jurisdiction of the provincial and state legislature until 1783, when the city of Charleston was incorporated. The city was divided into thirteen wards, from each of which the free white

[1] *Laws of New York*, 8th Session, Chap. 83.
[2] *Ibid.*, 21st Session, Chap. 50.

citizens who paid a small tax chose one warden. The intendant (mayor) was chosen at a subsequent election from among the wardens by the same electors.[1] The remaining southern incorporations of this period, Camden, S. C. (1791), Savannah, Ga. (1790) and Augusta, Ga. (1798), were in no wise peculiar, the council being elected by wards and the "executive" being chosen by the council. Property qualifications for voting were the rule.

Charter progress in Philadelphia

Two charters, however, deserve a more thorough consideration than any of those previously mentioned. The first of these is the act of March 11, 1789, incorporating Philadelphia under the style "Mayor, Aldermen and Citizens of Philadelphia". Fifteen aldermen were elected at large for seven years by the freeholders and thirty councilmen for three years by the freemen. The mayor was chosen by the aldermen from among their own number and the recorder was chosen by the mayor and aldermen. Thus representative government replaced the autocratic form of colonial times. The powers and duties of the wardens and commissioners for paving and cleaning the streets were vested in the corporation.[2] The provision of a different constituency for the two grades of council members was, from our point of view, the most significant innovation of this charter. The following year this beginning was developed by an act providing "that the consent and approbation of the mayor or recorder, and a majority of the aldermen, and also of the common councilmen, who shall from time to time be present", should be necessary for the passage of ordinances. In 1796 [3] the aldermen ceased to have legislative functions. These were vested in two bodies sitting separately—the select and common councils. The former consisted of twelve per-

[1] D. J. McCord, *The Statutes at Large of South Carolina* (Columbia, 1840), VII, 97-101.
[2] *Statutes at Large*, XIII, 193.
[3] Act of April 4, 1796.

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sons possessing the qualifications of state senators, the latter of twenty eligible to serve in the house of representatives. They were chosen for three years and one year, respectively, by the electors of representatives.

Significance of Philadelphia's experiment

The fact that the first two-chambered city council in the United States was thus early established in the largest American city of that day doubtless had much to do with the subsequent spread of that institution. The new plan carried with it the reduction of the aldermen to a purely judicial body, henceforth, with the recorder appointed by the mayor. The mayor ceased to be a member of either council, but continued to be elected by the city legislature in joint meeting from among the aldermen and for the term of one year. In 1799 he was entrusted with the appointment of all officers of the corporation except the treasurer and the clerks, messengers and doorkeepers of the council. In other words, Philadelphia, in marked contrast to the overwhelming majority of her sister cities, had, by the end of the century, proceeded far toward assimilating the forms of state and municipal government. That this was a deliberate and conscious process can hardly be doubted. The Pennsylvania constitution of 1790 established a bicameral legislature in place of the single chamber of colonial and revolutionary days. The act of 1796 specifically states that it was passed "on prayer of many citizens, to render the charter more conformable to the frame of government of this commonwealth".[1] The legislation of 1799 tended to put the mayor's authority on somewhat the same footing as that of the governor. Since 1789, however, the principal executive functions of the city, including the "pitching, paving and cleaning of streets", the leasing of city property, the appointment of the superintendent of the night watch, etc., had been vested by ordinances in a board of "city commissioners". They were three

[1] Act of April 14, 1796.

to five in number, originally appointed by the council, but after 1799, by the mayor. Through this device, the council tended to become more and more an exclusively legislative body, while the development of the mayor's power was held in check.[1]

State, rather than national, government the model for city government

That the form of municipal government in the United States was influenced henceforth by the successful institutions of the national government is, within limits, true. From the beginning, however, and more distinctly as time went on, it was the forms of state rather than national government which were imitated in city charters. If the model of the national government had been followed, a powerful centralized municipal executive would have appeared long before the last quarter of the nineteenth century. Our national and state governments alike were based upon the doctrine of separation of powers and leaned heavily on the device of checks and balances. But the motives which inspired their use differed diametrically. The motive of the framers of the Constitution of 1787 had been to prevent hasty popular action and promote "strong" government. The motive of the state constitution makers was almost uniformly to secure the control of every branch of the government to the people and to prevent the development of any authority dangerous to liberty. City charters—the work of state legislatures—were in general inspired by the latter set of motives.

Baltimore charter of 1796

To this rule the Baltimore Charter of 1796[2] was, in some degree, an exception. The suffrage was limited to property owners and high property qualifications were attached to office holding. The council consisted of two branches. The first was chosen directly by the voters, two from each of eight wards. The second was chosen indirectly by means of a college of eight elec-

[1] E. P. Allison and B. Penrose, *Philadelphia, 1681-1887, A History of Municipal Development*, 69 *et seq.*

[2] *Laws of Maryland*, 1796, Chap. 68. In effect, 1797.

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tors, one being chosen by the voters in each ward. The same electors also chose the mayor, who for the first time in the history of municipal government, was given a veto on the acts of the council. Measures might be passed over his veto by a three-fourths vote of both houses. The similarity of this form of government to that of the United States has led certain writers to speak as if the one had been an imitation of the other.[1] This may be true of the veto provision. The device of indirect election, however, originated, as far as this country is concerned, in the Maryland constitution of 1776, where it was applied to the choice of senators. It had been employed since 1782 in choosing the "special commissioners" who superintended the "leveling, pitching, paving and repairing of the streets, and the building and repairing of bridges" of the town of Baltimore.[2] In 1783 its use was extended to the selection of wardens of the port of Baltimore.[3] The same principle was embodied in the abortive incorporation bills of 1783 and 1793.[4] The evidence of the purely Maryland origin for this interesting device is clear enough. Furthermore, the separation of powers was by no means as thoroughgoing in the Baltimore charter as in the Con-

[1] W. B. Munro, *Municipal Government and Administration*, I, 92: "The principles of government which had been embodied in the national constitution commenced to work their way into the frame of city government. The first clear indication of this may be seen in the Baltimore charter of 1797, which made provision for a mayor and two-chambered city council. The lower house, or first branch, of the council was to be composed of two members elected annually from each of the eight wards into which the city was divided. The upper house, or second branch, was to contain one member from each of these wards. The charter provided that each ward should choose members of an electoral college, which in turn was to elect the mayor. Appointments were to be made by the mayor, but they were not made subject to confirmation by the upper chamber of the council, as would have been the case if the outlines of national government had been strictly followed. The mayor's selections, however, were to be made from the names on a list of eligible candidates submitted to him by the city council."

[2] *Acts of Assembly*, April Session, 1782, Chap. 39, and November Session, 1782, Chap. 17.

[3] *Acts of Assembly*, June Session, 1783, Chap. 24.

[4] T. P. Thomas, *The City Government of Baltimore*, Johns Hopkins University, Studies in Historical and Political Science, Fourteenth Series, No. II (Baltimore, 1896), 15 and 16.

stitution of the United States. The mayor and "second branch" of the legislature were elected at the same time and by the same eight electors. Doubtless they always represented the same interests. The initiative in the all-important matter of appointments was given to the "second branch", which submitted two nominees for each position of whom the mayor had to choose one. It must be admitted, however, that this charter departed more radically from the corporate type of organization than any other charter of this period. The city was coming to be regarded, not as a business enterprise in the common interest, but as a unit of government to be organized on the same principles as state or nation. This, indeed, was to be the guiding principle of nineteenth century charter makers.

REFERENCES

The best general account of the government of the colonial municipalities is to be found in J. A. Fairlie, *Essays in Municipal Administration* (1908), 48-94. See also the other works referred to in Chap. III. For the period after the Revolution there has been no comprehensive treatment. Information is to be found only in the histories of particular cities and in the statutes of the several states. For the former, see references attached to Chap. VIII and W. B. Munro, *Bibliography of Municipal Government* (1915), 8-13. The Dongan charter of New York and the Philadelphia charter of 1701 are reprinted in Reed and Webbink, *Documents*.

CHAPTER V

DEVELOPMENT OF MUNICIPAL ORGANIZATION, 1800-1888

Period of change without progress

PHILADELPHIA and Baltimore were merely the first of American cities to bring into view certain principles that were to determine the governmental organization of American cities for the next hundred years. The period 1800-1888 saw them develop from these beginnings to full maturity and demonstrate their merits and defects. To trace this development through the rapidly increasing number of cities and a multitude of charter changes is by no means simple. Too literal a performance of the task would soon lose the reader in a forest of unprofitable detail. This was an era of much change and little progress. Cities increased in number and population; the problems of city life underwent an even more rapid expansion. The simple conditions of the half dozen small cities of the close of the eighteenth century gave place to the complex conditions of modern urban life. City government, which was on the whole tolerably adequate to its responsibilities in 1800, proved unable to cope successfully with its multiplied problems. Under the circumstances, there was naturally continued effort to adapt the machinery of municipal government to the needs of larger populations and more varied services. These attempts consisted chiefly in employing the principles of governmental organization embodied in the state and national constitutions to modify, in varying degree, the simple council government of the eighteenth century. They met with small success. But failure provoked no boldness in experimentation; rather only petty tinkering within the narrow limits left by the belief that the city

was a little state and to be organized accordingly. The cities were restive in their discomfort, but they could do little more than vacillate—"fidget" is perhaps the word—from one governmental arrangement to another. The period had characteristics and principles, but no discoverable *tendency*. Not until very near the end did there appear signs of an orderly advance away from the circular drift of three quarters of a century.

Council government the rule in Europe

Down to the close of the eighteenth century city government, not only in this country but in Europe, had always been council government. There was an almost complete concentration of responsibility—albeit responsibility for small affairs—in the council and its chosen agents. In England and the continent the multiplying problems of growing cities have been met by the further development of the organization and powers of the council. The council has gradually been popularized, Prussia in 1919 being the last to introduce universal and equal suffrage in its election. In England there is no executive authority distinct from the council. That body performs its administrative tasks through committees of its own number. France has developed a separate executive authority in the *maire* or mayor and his *adjoints* or assistants, but they are elected by and from the council for the term of the council only. In Prussia the municipal executive is more independent of the council because of the professional character and long term of the *Burgermeister* and other paid members of the *Magistrat*. The *Burgermeister* is chosen for twelve years, during which period he may be removed only for serious cause. Executive power (except in police which belongs to the *Burgermeister* exclusively) is vested in a board consisting partly of paid and partly of unpaid members, each at the head of a branch of the city service, under the presidency of the *Burgermeister*. The paid members are chosen for twelve years and, like the *Burgermeister*, are trained professional officers. The

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Latin countries have followed French models rather closely, while Belgium, Holland, and the smaller German states present some form of compromise between the French and Prussian systems. In none of these countries is there more than a division of labor between the council and its agencies of administration. This is not a "separation of powers" in the American sense. There is no setting up of one authority against another —no checks and balances—for ultimate authority, so far as it belongs to the city at all, is vested in the council. It alone determines policy, adopts budgets, and selects the major municipal officers.

Separation of powers and checks and balances

There was certainly no formula in which our Revolutionary forefathers believed more heartily than that of the separation of powers. They propounded it at every opportunity. That they did not succeed in applying it with entire consistency was not their fault, but that of inexorable facts which refused to be molded to any theory. It was supplemented and supported by another equally popular conception: that of checks and balances. Assuming government to be like some great machine, they thought it must be protected against itself by counterpoising one element against another. This doctrine was peculiarly convenient because it justified not only the separation of executive, legislative and judicial powers but certain striking instances of failure to separate them, such as legislative confirmation of appointments, executive veto and judicial review of legislative acts. The vogue of these companion theories was based not so much on abstract grounds as on the very actual fear of "power" which pervaded the popular mind. To the men of that day poor, crack-brained George III was a hideous tyrant, from whose hateful rule they had barely and with much sacrifice escaped. They proposed to set no other in his stead—president, governor, legislature, mayor or council. They had not learned to rely on the ballot as a sufficient safeguard against autocratic

power. They simply would have no man or body whose power was sufficient to threaten liberty.

Their application to city government

These new theories, of course, were applied much more hesitatingly in city than in national and state government. Liberty was obviously in little danger from the activities of city officials. In fact, cities were so few and relatively unimportant in 1800 that men gave little thought to them or their problems. As time went on, however, and the capacity of bad city government for harm—especially in the way of dishonesty and extravagance—became apparent, the check and balance principle was applied more and more frequently as a remedy. Setting one officer or body to watch and restrain another was the best protection against abuse of power which a well-nigh universal distrust of city government could devise. So strongly ingrained did this habit of thought become that many people are still enchained by it today. The tendency to adopt checks and balances in city government was heightened by the success of the new national government—a success so stupendous as to glorify both the weak and strong points of the constitution. The actual kind of checks and balances adopted was determined by the democratic movement. It was state government, with its weak governor and numerous elected administrative officers, which became the actual model for municipal institutions.

Separation of judicial and corporate powers

One of the first effects of the application of the doctrine of the separation of powers to city government was the loss by mayor and aldermen of their magisterial functions. This tendency was already evident before the end of the eighteenth century. In Philadelphia, where the aldermen continued to be magistrates, they ceased, in 1796, to have any share in the government of the city. As a general proposition, it is safe to say that in the country west of the Alleghenies, judicial and municipal functions were never mingled. It was in the south that mayors and councilmen continued longest to

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enjoy the position of magistrates. The change was, on the whole, desirable. It had, however, one unfortunate result; namely, the lengthening of the ballot incident to the separate election of local magistrates.

Independently elected but weak mayor

The greatest loss which the council suffered was in the establishment of the elective mayorship. The beginnings of this have already been noted in the previous chapter. The electors of Charleston, South Carolina, under its charter of 1783, chose the "Intendant" from among the "Wardens" just elected, and after 1808 from the "Corporators" possessed of the required qualifications. The curious charters of Hartford, New Haven, Middletown, Norwich, New London, and Newport (all of 1784) gave the election of the mayor, as well as the election of the council and other officers, to a meeting of the "freemen". In the same year the charter of New Brunswick, New Jersey, conferred a similar power on a meeting of freeholders. The people of New Orleans obtained the right to elect their mayor in 1812.[1] Boston, however, was the first of the large cities to adopt the elective system by her first charter (1822). New York followed in 1834 and Philadelphia in 1839.[2] By 1850, except in very small places, popular election was the almost universal rule. In most cases, the elective mayor ceased to be the presiding officer of the council. What he lost in this way he much more than gained in his independent origin and in the qualified veto, which was commonly bestowed on him after the middle of the century.[3] A mayor, elected by the people and armed with the veto, was at least a powerful check upon the council, even though his administrative powers

[1] Act of September 1, 1812. F. X. Martin, *A General Digest of the Acts of the Legislature, etc., of Louisiana* (1816), II, 288-298.

[2] The mayors of other important cities became elective as follows: St. Louis, 1822; Detroit, 1824; Providence, 1832; Baltimore, 1833; Cleveland, 1836; Chicago, 1837.

[3] The mayor of New York was given an absolute veto in 1830. Other cities established it in the qualified form as follows: Baltimore, 1796; New Orleans (temporarily), 1805; St. Louis, 1838; San Francisco, 1850; Brooklyn, 1850; Chicago, 1850; Boston, 1854; Philadelphia, 1854.

remained small. He divided the executive power with sometimes as many as seven or eight other elective officers. Such power of appointment as he had was subject to the confirmation of the council. His power of removal was at best subject to the same limitation and at worst involved the trial of offending officials by the courts. The council could not get rid of him, but per contra he could carry out no least item of policy without the concurrence of the council, which alone held the keys to the city treasury. There was a general tendency, however,—almost the only tendential development of the period, and intensified in its later years—to strengthen the mayor's position. The mayor's term, when the office was first made elective, was seldom longer than a year. By the end of the period, annual election persisted only in Boston and some smaller cities. The usual term was two years and Philadelphia, St. Louis and New Orleans already had a four-year term. Mayoral salaries rose from almost nothing at the beginning to a scale topped by the $12,000 salary of the mayor of New York.[1]

Power of appointment

The council lost the almost exclusive power of appointment which it had possessed prior to the nineteenth century. This power did not follow the analogy of the national constitution by going exclusively to the mayor, but went in some instances to the people, in others to the mayor (generally, however, subject to council confirmation), and in still others to state authorities. Most frequently the people, council and mayor, and sometimes the state as well shared in the appointment of the administrative personnel of the same city.

In Philadelphia

The absence of any logical process of development may be illustrated from the history of Philadelphia.[2]

[1] It is to be remembered that in the early eighties a dollar was a dollar and not something less than fifty cents.

[2] See Allison and Penrose, *Philadelphia, passim.*

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By the charter of 1789, the power of appointment[1] was vested in the council and aldermen, passing to the select and common councils in 1796. The Act of 1799 transferred to the mayor the power of appointment, without necessity of confirmation by the council, of all officers created by ordinance. The Act of 1839, however, which made the mayor elective[2] by the people, gave the councils power to provide by ordinance for the election or appointment of all officers. This power was so exercised as to confine the mayor's power of appointment practically to the police department. This situation was continued under the Consolidation Act of 1854 with the modification that henceforth the people were to elect directly three City Commissioners, a City Solicitor, City Treasurer and City Controller, besides Aldermen (with solely judicial powers and later supplanted by magistrates) from each ward. It was not until 1884 that the mayor recovered the powers lost in 1839.

In New York

The history of the power of appointment in New York is even more interesting. Down to 1849 the general power of appointment[3] belonged to the council. In that year, a new charter provided for the election of all heads of departments by the people and the appointment of subordinate officers by the heads of departments. In 1857, the mayor received the power of appointing heads of departments, subject to confirmation by the Board of Aldermen. In 1870, the celebrated Tweed charter removed this restriction. In 1873, it was restored and it continued in effect for the remainder of the period.

In Boston

In Boston, under her first charter (1822), appointments which were not made by the city council were

[1] Except the Clerks of the Market, appointed by the mayor.
[2] Act of June 10, 1839.
[3] The mayor of New York, from the beginning, had the power of appointing certain minor officers.

generally made by the mayor and Aldermen, the former nominating and the body, of which the mayor was a voting member, confirming. In 1854, the mayor lost his vote in the Board of Aldermen and while he gained the power to remove officers nominated for confirmation by the board, the more important officers continued to be chosen by the common council as a whole. It was not until 1884 that the mayor gained the right to nominate the principal officers of the city, subject to confirmation. Under all three charters, numerous officials were chosen by the people of Boston.

The power of removal

The power of removal was, in this period, a matter of minor significance, practically all officers holding for fixed terms which rarely exceeded two years. In general, the authority that appointed might remove. The later charters frequently required that removals must be for "cause", which opened the way to interference by the courts. The Tweed charter in New York, which first gave the mayor of that city an absolute power of appointment, allowed him only to impeach those whom he desired to remove before the Court of Common Pleas. The charter of 1873 required the approval of the governor before an order of removal could be effective.

Elective department heads

It was more than a fortuitous coincidence that the so-called "democratic movement" of the twenties and thirties was strictly contemporary with the first inpouring of foreign immigration and the first rapid increase in city population. The rude protest of the frontier against aristocratic domination of politics found a sympathetic echo in the growing proletariat of the cities. One of the strongest tenets of the new democracy was a belief in the total efficacy of the elective principle. "How better," reasoned the followers of Andrew Jackson, as had their predecessors of the early Revolutionary days, "can we secure a government in the interest of the people than by subjecting all important officers

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to selection at frequent intervals by the people?" The difficulty of amending the Constitution of the United States prevented this theory from having any effect on the form of the national government, but it was very vigorously applied in the more easily changed state constitutions and city charters. The sudden growth of city population gave occasion for the creation of new departments, a tendency which was heightened by such development as the application of illuminating gas to street lighting and Sir Robert Peel's innovation of a uniformed and disciplined police force for London. The demands of the rampant democracy of the period for more elective offices thus found an ample opportunity in the expanding administrative activities of cities. It was thus that the "long ballot", which subsequent experience has determined to be the very negation of democratic control of government, was introduced into city affairs in the name of democracy. It is worthy of note that not even in that far off time did the people take much real interest in the election of city officers other than the mayor. Numerous elective offices became at once, what they have remained, political prizes at the disposal, for their own purposes, of those controlling the party organization. Then, even more than now, the people voted their party tickets straight. Not a city of any consequence altogether escaped the baneful influence of the municipal long ballot. It reached its maximum about the middle of the century. The New York charter of 1849 provided for the popular election of the heads of eight departments besides the mayor. The elective principle was even more decidedly in evidence in the cities of the new West, than in the more conservative East. The San Francisco Charter of 1850 made the treasurer, comptroller, street commissioner, collector of city taxes, marshal, and attorney elective officers. The Chicago Charter of 1851 provided for the election at large of a mayor, city marshal, treas-

urer, collector, surveyor, attorney, chief engineer, and two assistant engineers. The Ohio law[1] of 1852 for first-class cities made provision for the election of a marshal, civil engineer, fire engineer, treasurer, auditor, solicitor, police judge, and a superintendent of markets.

Board system

Another and no less significant characteristic of the period was the rather general use of "boards" for the management of city departments. The earlier and more natural tendency had been toward individual department heads.[2] It is true that Philadelphia, prior to 1854, handled some of her most important functions through a board of city commissioners, but boards, either elective or appointive, were the exception until past the middle of the nineteenth century. When the state took over the administration of a city department, as it did the police of New York in 1857, it usually employed a board for the purpose. Boards of commissioners with powers somewhat similar to those of Philadelphia, but elected by the people, were provided for both Cincinnati and Cleveland by the Ohio Act of 1852 for the government of first-class cities. Subsequent legislation in the case of Cleveland increased the number and powers of elective boards until the mayor and council were almost powerless, a situation which continued until 1891. The New York charters of 1870 and 1873 entrusted the control of all but two or three departments to boards of from three to five members appointed by the mayor. Precisely whence this passion for boards arose is not very clear. It may have been an outgrowth of the practice of leaving the administration of certain services to committees of the council. It may have arisen from the general disposition of the time to diffuse authority. It may have been an effort to prolong the era of volunteer citizen service. At any rate, the "board

[1] Cincinnati and Cleveland.
[2] See New York Charter of 1849.

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system" fastened itself on American city government and has never wholly relaxed its hold.[1]

Where the board system works well

Experience has demonstrated that for certain departments the board system works well. Elective boards of education have been successful in the great majority of American cities. Libraries, playgrounds, and other social activities have flourished under the administration of appointed boards. It is to be noted that the temptations to political interference are at a minimum in the case of such an institution as a public library. On the other hand, there are always interested and capable citizens ready and anxious to take a hand in its management. The city has thus almost forced upon it a great deal of splendid volunteer service which it could not take advantage of except under the board system. There are certain other departments, of which the health department may be taken as an example, which are required to make regulations and pass upon infractions of the law—in other words, exercise legislative and judicial powers. For the direction of such departments by a board, there are many and forcible arguments, although even in these cases the disadvantages probably outweigh the advantages of the board system.

Where the board system works badly

For the conduct of the great active departments of the city government—notably police, fire, public works, etc.—the board system was never defensible. In these departments the conditions of success have always been capacity for prompt action and definiteness of responsibility. Neither of these requisites is to be found in administration by a board. Boards, when introduced, quickly become mere nurseries of politics. The efforts to alleviate the evil only made it worse. The New York Charter of 1873, for example, created a Board of Police

[1] For a discussion of the relation of the board and single head types of departmental organization to the power of the mayor, see Chap. XI.

Commissioners of five members with six year terms, expiring alternately,[1] in the hope that the board would develop independence of politics. The result was to relieve the appointing authority—the mayor, whose term was two years—from all responsibility for the conduct of bodies whose personnel he could not control. The people were left without the weakest handhold on the actual management of the department. An even more unfortunate device was the "bi-partisan" board which became common in the later years of the period. Sometimes the board members quarreled endlessly and sometimes they fixed things up between them by division of the "spoils". In neither event was there the slightest hope of holding any elective officer or even holding any party responsible for their conduct.

The council of the period; the number of chambers

It is hard to say what was the typical form of city council in this period. If we look at the larger cities of the East, it was an affair of two houses. If we look at the vastly more numerous small cities, especially the rapidly increasing number west of the Alleghenies, it continued to be unicameral. We have already seen that Baltimore and Philadelphia had passed to the two-chamber system before the end of the eighteenth century. Pittsburgh (1816) and Boston (1822) adopted it in their first charters.[2] New York employed it from 1830 to 1873. St. Louis tried it in 1838, gave it up in 1850 and tried it again in 1866. On the other hand, Cleveland and Chicago never departed from the unicameral plan. Most of the western cities that did adopt

[1] Under the notorious "Tweed" Charter of 1870, there had been four commissioners holding for eight years. It may be supposed that responsibility on the part of the commissioners was not the motive of this charter.

[2] The Boston Charter of 1822 is peculiarly interesting, as it clearly shows, on its face, that the mayor and aldermen were to take the place of the Selectmen of the town, while the common council was to succeed the town-meeting.

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the bicameral system came to it late and abandoned it early.[1]

The size of the council

Whether of one or two chambers, councils, judged by European practice, continued to be of moderate size. On the whole, they grew throughout the period with the growth of city population. New York continued to have one alderman and one assistant alderman from each ward down to 1857, when the numbers were fixed at seventeen and twenty-four respectively. Boston began her municipal existence with nine[2] aldermen and forty-eight common councilmen. St. Louis started out in the same year with a single house of nine; San Francisco, in 1850, with eight in each house; Philadelphia early ran ahead of the other cities in the population of her legislative halls, having in 1854 twenty-four members of the Select Council and seventy-six of the Common Council. By 1885 the New York council consisted of one house of twenty-one, the Chicago council of thirty-six, the Boston chambers of twelve and seventy-three members respectively. The two houses in Baltimore had a membership of ten and twenty; those in St. Louis, thirteen and twenty-eight; Pittsburgh thirty and forty; San Francisco twelve and twelve. In most instances, all members of both houses were elected by wards, the most notable exceptions being St. Louis, San Francisco and Detroit, where, at the close of the period, the upper house was elected at large. Under the ward system, it should be said, "gerrymandering" was common and the inequalities of population between one ward and another were often enormous.

[1] Western cities adopted and abandoned the bicameral system as follows:

	Adopted	*Abandoned*
St. Louis	1838 and 1866	1850 and 1910
San Francisco	1850	1856
Louisville	1851	....
New Orleans	1852	1870
Milwaukee	1858	1874
Cincinnati	1870	1890

[2] Including the mayor.

Terms of councilmen

The terms of councilmen showed a tendency to increase slowly during the period. In 1888 both Boston and New York were still electing their councils annually, but Philadelphia chose her Select Council for three and her Common Council for two years. St. Louis and San Francisco chose their upper houses for one year and their lower houses for two years. Taking the country as a whole, nearly half of the large cities chose their councils biennially, while many of the rest chose at least one house at that interval. Only one city, New Orleans, chose its whole council for four years and only four or five adhered exclusively to annual elections. Councilmen in many cities received no salaries, and in none were the salaries large at the close of the period.

Place of the council

In spite of the establishment of the elective mayorship and the loss of its exclusive power of appointment, the council continued to be the dominant authority in the city government. This was due to two causes. The first and most important of these was that the council retained its control of finance. In those days, of course, there was nothing like the modern "budget", but such planning of expenditures as there was took place in the finance committees of the council. Except in a few instances toward the close of the period the mayor could not veto items of an appropriation ordinance. Thus the council, within the limits allowed by state law, dealt freely with the city's revenue. It has been frequently pointed out that a city, unlike the state and national governments, is primarily engaged in buying services and selling or giving them to its people. The power of the purse is, therefore, of relatively more importance in city than in other fields of government. The life of every department depends on its appropriations, and hence the council, by its unrestricted control of appropriations, was in a position to dictate to the departments. Its power in this respect was enhanced by the decentralization of executive authority. A council could

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not afford to cripple the whole city government and an executive branch, well organized under a single head, could confront it with confidence. When, however, as was generally the case during the period under discussion, each department was a little province independent of every other department, there was no resisting it. The council could demand whatever price it would in return for its appropriations. Its control over administration was greatly facilitated by its organization into committees. There was a committee for each department, and these committees, in most instances at least, divided the direction of the department with its nominal head. The opportunities inherent in such a situation for what the popular speech of America so aptly calls "passing the buck", were endless. Committees, as a rule, acted secretly and gave out no record of their votes. The head of a department could always blame anything that went wrong on the committee, and when the public sought a victim for its vengeance, it found only an impersonal "committee", each member of which was ready to deny his responsibility.

A period of transition from volunteer to professional municipal service

In the light of subsequent experience, it is safe to say that no single element contributed so strongly to the unsatisfactory results of city government in the middle years of the nineteenth century as the confusion which existed as to the kind of persons to whom the tasks of municipal administration were to be entrusted. During the eighteenth century and well into the nineteenth, the few functions of the American city were performed for the most part by unpaid—amateur, if you will—efforts of citizens who undertook to do their part in the administration of public affairs, incidentally to their ordinary private vocations. A few of the higher officers, like the mayor and clerk, received some compensation. There were also watchmen, laborers, etc., who were paid wages. With these exceptions, however, municipal service was gratuitous. If the list of officers

of these early municipalities sometimes seems portentously long,[1] it was because of the desire not to put too great a burden on any one man's shoulders.

As cities grew in size and the services which they must render multiplied, it became necessary to employ larger and larger numbers of persons to preserve the peace, sweep the streets, clean the sewers, and so on. In the great cities of the close of the period, these persons had become a veritable army. The task of supervising this body of employees and of directing the expenditure of great sums of money in large municipal undertakings called increasingly for men of real capacity who should devote long hours of labor to their performance. Furthermore, in many branches of city administration there was a growing need of men possessed of a high degree of technical knowledge. Thoughtful persons, even in that day, recognized that a change in the demands of municipal service had taken place. The Boston charter commission of 1875 said,[2] "It would seem to be clear that duties so numerous and important cannot be properly superintended and managed by persons who render gratuitous services only, or who are chosen to office, not for their experience in the duties which they may be called upon to perform, or their peculiar fitness and skill in the work of the different departments which they may have in charge. The city is a great corporation, upon which is devolved not an abstract duty only of providing for the public welfare, but the practical work of the city in administering its various departments and executing the public works committed to its care. No prudent individual or well-conducted business corporation would trust the management of important affairs to the care of inexperienced, incompetent or inadequately paid agents. No good reason can be given for

[1] In the New England town the minute divisions of functions and the consequent increase in number of offices was carried to extreme.

[2] Report of the commission to revise the city charter, Document 3, *Boston City Documents*, 1875, V-VI.

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the adoption of a different policy by the city. The great object in providing for the performance of official services in behalf of the city should be to so regulate it that its servants should, as far as practicable, be trained by experience and practice and be made subject to proper control."

The American public at large, however, was very slow to come to this realization. Decade after decade cities stumbled along in the idea that they could get on with the casual service of private citizens in places of responsibility. The paid citizens who performed these important tasks continued to be chosen by popular election or political appointment, with little or no protest from the community. Occasionally high salaries were paid, but under the circumstances, they served only to increase the temptation of the rapacious politicians to seek office. The result was that the direction of the activities of the city was almost always in the hands of bungling amateurs who made our pavements, sewers, street cleaning and police protection a jest in the eyes of foreign observers. In the last forty years a wonderful change has taken place in the quality of municipal administration, for which the regeneration of city politics and improvement in the forms of city government are only partially responsible. The fact that we have now settled down to entrusting the actual operation of most of the city services to fairly well-paid and reasonably permanent officials has been the principal cause of this change.

The small cities of the West

It is essential to an understanding of this period to recall that it was the period of the peopling of the continent. As the tide of population swelled into new regions, cities sprang up by the scores and hundreds. New York had been a chartered city for a hundred and fifty years before Cleveland received her first charter. Minneapolis was not incorporated until 1867, nor Seattle until 1869. There was never a time from 1800 to 1888

when the characteristic municipality in a large part of the United States was not the small city. There were two chief types of small city organization. One was modeled on the borough governments of Pennsylvania. It consisted of a board of trustees, one of whom, whether separately elected to the office or chosen by his colleagues, was the president or mayor. This officer possessed little or no more power than came to him as president and member of the board. There might be other elective officers, clerk, auditor, treasurer, etc., but the chief power was in the hands of the board. This was the form of government provided by the Cleveland charter of 1836 and the Chicago charter of 1837. It is still the prevailing form of government for small cities and villages in several states; for example, fifth and sixth class cities in California,[1] villages in Illinois, etc. The other type more closely corresponded to the form of government in the older cities of the middle of the nineteenth century: an elective mayor with a veto and power of appointment, subject to council confirmation, a council usually of one house but sometimes of two houses and a long list of elective officers. Of this type, the San Francisco charters of 1850 and 1851 afford good examples. The second type represented more fully the democratic tendencies of the day and frequently replaced the first in the second stage of municipal development—witness the Ohio law of 1852 for Cincinnati and Cleveland and the Chicago charter of 1851. This type of government continues to be used in a multitude of cities large and small, except that there are commonly much fewer independently elected officers than formerly. In fact—if the number of cities employing it be taken as the criterion—it may be said to be the normal form of city government in the United States.[2]

[1] Up to 10,000 population. Cities of 3,500 and over may, however, adopt home rule charters.

[2] See Chaps. IX, X, and XI.

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CHAPTER VI

THE TRIUMPH OF THE MACHINE

A broadening of municipal suffrage

PROBABLY the greatest single influence on the character of municipal government in the nineteenth century was the enlarged electorate which the progress of democratic ideas made inevitable. On the whole, no distinction has been made in the United States between municipal and state suffrage. In colonial New York[1] the municipal franchise belonged to "freemen" —persons admitted by the city council, on the payment of a fee, to the freedom of the city—as well as to the provincial voters who were required to be possessed of real estate of the value of £40. The Constitution of 1777 extended the right to vote for members of the Assembly to the freemen of New York and Albany, and henceforth the conditions of the suffrage were uniform throughout the state. The exceptions to this practice have been too few to be significant. In fact, most of the state constitutions now guarantee, to all who possess the specified qualifications, the right to vote in *all* elections.[2] This is no place in which to rehearse the his-

[1] After 1730.

[2] The American practice is in marked contrast to that of England, where the municipal suffrage has always been treated as a matter to be settled on considerations different from those determining the national suffrage. The municipal suffrage has sometimes been more liberal and sometimes less so than the national suffrage. At present, it is less liberal for men and slightly more liberal for women. Simple residence in the constituency is enough to qualify a male elector for the parliamentary franchise. In the case of the local government franchise, he must occupy land or premises as owner or tenant, which has the effect of excluding domestic servants and young men living at home with their families. Women may vote for members of Parliament if they are thirty years of age and either occupy land or premises as owners or tenants or are the wives of owners or tenants. The local government vote is conferred on the same women and, in addition, those between twenty-one and thirty who occupy as owners or tenants in their own right. (*Representation of the People Act*, 1918, 8 George V., 64). In the principal countries of continental Europe the conditions of national and municipal suffrage are now the same.

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tory of the voting privilege in this country. It is enough to recall that in 1800 nine of the nineteen states of the union had property and six had tax-paying qualifications, while only four had neither of these requirements. Before the outbreak of the Civil War, all such restrictions, except very low tax-paying qualifications in five states, had disappeared, and the country as a whole enjoyed universal white male suffrage. In fact, the suffrage was practically settled on that basis by 1840. Only four states west of the Alleghenies, or outside the original thirteen, ever had property or tax-paying qualifications,[1] and no state after 1817 came into the Union with them. After the Civil War, the extension of the suffrage to negroes had some appreciable direct effect in certain northern cities. It was long after 1888, however, that the great negro invasion of these cities began.[2] In the South, the prompt elimination of the negro vote by one device or another left only indirect effects, such as the one party system. Women's suffrage belongs wholly to the era of reform.

Immigration and naturalization

To understand the full effect of universal suffrage, one must keep in mind the fact that about 1832 there began to pour into the United States a mounting flood of immigration and that our naturalization laws were, on their face, liberal and most laxly enforced. In 1832 the number of immigrants jumped from the 22,633 of the previous year to 60,482, and by 1845 they were coming by the hundred thousand annually. Many of the newly arrived aliens found employment on the railroads and other works far from the centers of population, but the majority stopped in the cities of the Atlantic seaboard. In the years 1846 to 1851, approximately 1,200,000 Irish abandoned their native country for America. Then came the Germans, 4,500,000 from 1855 to 1890. Most of these immigrants were untutored peasants, ignorant

[1] Except certain southern states since reconstruction.

[2] This invasion dates from the European War and had its first effect on the census tables in 1920. See table on page 25.

of the practices of representative government, separated from the bulk of the native population by religion, language, and habits of thought. At the same time, our naturalization and election laws admitted the alien almost immediately to full participation in the privilege of universal suffrage. Since 1802 only five years residence has been required for the acquisition of citizenship, with a preliminary "declaration of intention" two years before the final act of naturalization. Several states admitted to the suffrage aliens who had merely made this declaration, thus allowing them to vote after only three years' residence in the country. Furthermore, the power to "naturalize" was conferred not only on the United States courts, but on the principal courts of record[1] of the states. This last provision opened the way to endless fraud. A Tammany judge in a New York court of record was prone to inquire very listlessly into the facts when a Tammany alderman presented the alien applicant. In short, many aliens were not obliged to wait even the brief period provided by law before having placed in their hands the sacred privilege of the ballot.

Results of enlarging the electorate

It is obvious that the enlargement of the electorate opened the way to new forms of political activity. Without attempting to deny that in the long run the votes of all the people are the surest basis of good government, the broadened suffrage and the introduction into it of hundreds of thousands of ignorant foreigners gave an opportunity to the political organizations of the period which they had not enjoyed among a smaller and more homogeneous group of voters. Impelled by the urge of immediate self-interest, the politicians quickly developed means of controlling the votes of the populace which it took the slower resolution of the community itself more than half a century to devise

[1] Those in which there was no limit on the amount in controversy in any case.

methods to counteract. Universal suffrage alone might have occasioned little difficulty had it not been accompanied by the influx of aliens, the rapid growth of cities, a demand for wider city services, the development of great national parties, and the rise of the so-called democratic principles of checks and balances, popular election of administrative officers and rotation in appointive office. It was the concurrence of all these forces that brought city government into disrepute. In this result there can be no doubt that the existence of a large, ignorant and inexperienced electorate played a great part. The old standards, such as they were, gave way and new ones were erected, only with great difficulty. There had been graft enough in colonial New York.[1] There were venality and favoritism in the "taxpayer" governments of the post-revolutionary cities. There were, however, attractions about municipal office which might be sought without expense or loss of dignity in a limited electorate of one's acquaintance. This meant "leading citizens" in office and some intelligence in the direction of affairs. Such graft or misconduct as there was, judged by our standards, fell strictly within the limits of what the propertied class considered the legitimate perquisites of municipal office. With universal suffrage, the old type of office-holder and the old standards went out. The politicians of the new régime were held to no standards, for the new electorate had found none. The city politicians of the period belonged largely to the predatory classes and their ethics were those of the bartender, the gambler and the gang leader. Rough virtues men of this order did indeed possess, courage, loyalty to friends, etc. It needs no demonstration, however, that among the concepts of their ethical system there were none which enforced loyalty to such an abstraction as the city.

[1] See Edwards and Peterson, *New York as an Eighteenth Century Municipality*, Columbia University Studies in History, Economics, and Public Law LXXV (1917).

To the new conditions of universal suffrage were applied an election procedure which had been developed when voters were few. The results were disastrous. Outside of New England, where voting was usually by "papers" or written ballots, the voting of the colonial times had been *viva voce*. By the time, however, that universal suffrage was fairly established, printed ballots, prepared in advance by the several parties, were in general use. These ballots were usually printed in distinctive colors or with distinguishing emblems.[1] The agents of the parties or candidates handed them out at the polls. Vote buying was practical under these circumstances, for the venal voter could walk to the ballot box with his ballot conspicuously displayed and deposit it in the full view of the purchaser. When to avoid this evil it was required that ballots be printed on white paper without emblems, the parties countered by using different shades of white. Near the close of the period California and Oregon found it necessary to have all ballots printed on paper furnished by the secretary of state. Separate tickets were employed for each class of office. By an act of 1870 for New York City, voters were called on to use nine separate ballots deposited in nine separate boxes. It was, of course, difficult to watch so many boxes, and ballot-box "stuffing"—accomplished by voters putting two or more ballots in the same box

[1] E. C. Evans, *A History of the Australian Ballot System in the United States* (1917), 6-7: "In a municipal election in Massachusetts the Republicans used a red ticket and the opposition a black one; and in the same state in 1878 the Republican ticket had a flaming pink border which threw out branches toward the center of the back, and had a Republican indorsement in letters half an inch high. In another election in Massachusetts the Republicans used a colored ballot, while the Democratic ticket was white with an eagle so heavily printed as to show through the ballot. In one election in Orangeburg County, South Carolina, the Republican ticket was of medium-weight paper, with the back resembling a playing-card, and, according to statements made, could be recognized across the street. The Democrats had a tissue-paper ticket, so that the smaller could be folded in the larger one, and an outsider could not tell that there was more than one ticket being voted. The Democratic ticket used at the polls in Charleston, South Carolina, had a red checked back and was printed with red ink. Tissue-paper ballots were used quite extensively throughout the South."

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—was by no means uncommon. Counterfeiting by one party of the ballots of another was a trick frequently resorted to. Sometimes the whole list was substituted, but the more insidious practice was to insert only one or two names. The voter was often bewildered by the presentation of numerous lists uniting candidates of several parties in varying combinations. Under such circumstances, he was likely to welcome a certified bona fide straight party ticket.

Registration

The most elementary condition of an honest election is an authentic list of those who are entitled to vote. In colonial and early nineteenth-century America, there were no such lists. Any person who presented himself at the polls was permitted to vote unless "challenged", in which case the election officers then and there passed on the question of his eligibility. Such a system had been well enough in the days of small cities and limited suffrage, but it became the occasion of almost limitless fraudulent voting in the turbulent political struggles of the thirties and forties. The first registration law for New York City was not passed until 1840 and remained in force only about three years. Its repeal was marked by extraordinary frauds at the presidential election of 1844, when the Polk and Clay electors together polled 55,000 votes although there could not be found in the city more than 45,000 qualified voters. When registration laws were finally enacted they usually called for the preparation of the voters' lists by assessors, registrars, or other local officials. This proved only one degree better than no registration at all, for the politicians managed to control those responsible for making up the lists. The purpose of the New York registry act of 1859, for example, was defeated by the purchase of a Republican member of the Board of Supervisors, a bipartisan body which appointed the registry clerks, thus enabling Tammany to name the registration officers. The names of men long dead were kept on the registers

and tangible "phantoms" appeared on election day to vote in respect of them. Nor did the politicians lack the imagination to supply many names wholly fictitious. There was in this period only the barest beginning of the personal registration laws which have now effectually curbed these evils in all of our large cities.

Nominating machinery

The nominating of party candidates was originally understood to be a matter of interest only to the party concerned, which was left to handle nominations as it saw fit. In fact, it was not until 1866 that the first laws regulating primary elections were adopted in New York and California. Even at the end of the period (1888), except for penalties attached to the grosser forms of fraud, primaries, for the most part, were still a private affair of the parties. Allowing for a good many variations in detail, the system of municipal nominations in vogue from about 1830 to 1888 was a city convention based on primary meetings or caucuses in the several wards or precincts of the city.[1] These caucuses nominated the ward candidates, together with delegates to the city convention which nominated the candidates to be chosen at large. In theory, the system was highly democratic. In fact, however, the caucuses were easily dominated by the professional politicians. Ordinarily they were so poorly attended that the ward leader with his henchmen—the office-holders, would-be office-holders, recipients of favors, saloon-keepers, protected criminals—were sufficiently numerous to have their way quietly in every matter. When more exciting circumstances induced his presence, the citizen not in the habit of attending caucuses found, to his surprise, that his right to vote was settled, not by a predetermined list of members of the party, but by the *viva voce* vote of those present, the result being interpreted by the temporary chairman. This latter officer was always a member of

[1] There might be aldermanic conventions where the aldermen were chosen by districts larger than those used for the primary meetings.

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the organization whose rights ran back to a previous caucus. If the newcomers could not be eliminated by parliamentary tactics, there always remained the "strong-arm" men to threaten, jostle, and even eject them. The conventions themselves were subject to manipulation and even to violence. On the whole, the system of nominations played completely into the hands of the professional politicians.

National politics in city elections

That the bitter pre-revolutionary struggle between Whigs and Tories accustomed the American people to taking their politics hot is incontestable. The issues of the period following the adoption of the Constitution were national in scope and fully maintained the established standards of political intensity. The "era of good feeling" was quickly and rudely ended by the assault of the Jackson democracy on what it regarded as the entrenched privileges of the aristocrats. It need not surprise us, therefore, that city elections were always conducted on national party lines, with occasional factional splits, of which the warfare between the followers of Burr and Clinton in New York may be taken as the classic example. The full effects of this domination of local politics by national issues were not had, however, until democracy had triumphed and universal suffrage and the convention system had been established. The new parties into which the country was divided after 1832 were in theory democratically organized, but it quickly became evident that the purpose of their organization was not so much popular control as party victory. This required regularity and discipline in the party members, and of this fact the predatory politicians took advantage. Within very broad limits they could nominate whom they would and the party would vote for their candidates. Similarly, the party membership was willing to blind itself to the evils of appointments for political reasons, extravagance in expenditure, abuses in contracts, and even theft from

the city treasury, provided it seemed to strengthen the party for its national contests. Philadelphians put the protective tariff above the honesty and efficiency of city government, and the majority of New Yorkers were willing to pay Tammany's price for Democratic presidential electors. The intensity of the national political struggles of the past is explained with difficulty to the present generation. There is no man of fifty, however, who has not perceived with his own senses the fervor oozing out of them. In 1888 thousands of sober business men paraded the streets clad in foolish uniforms bearing torches and shouting themselves hoarse for Harrison or Cleveland. In those days a rally was a rally. Crowds assembled and cheered lustily anyone who could, in fevered periods, denounce the opposition. Today it is almost impossible to drag anyone to a political meeting no matter how eminent the speakers. On the other hand, we take infinitely more interest in city affairs than our grandfathers. The intensity of national party feeling was the opportunity of the machine. It was a common saying of bitter partisans that they would vote for a "yellow dog" on the Republican or Democratic ticket as the case might be. They often did.

The machine

The term "machine" is very often loosely applied to almost any kind of political party organization which is vigorous and effective. It is better, however, to confine it to those organizations in which the primary interest is not the propagation of the principles of a political party but the profit of the organization itself. It is an equally significant characteristic of the machine that it is not controlled by the members of the party. Whatever concessions it offers to appearances it is the machine itself which makes nominations, distributes patronage, dictates the conduct of mayors and councilmen. It may be described as an abnormal or perverted political organization, in which the normal functioning of a

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party is reversed. Edmund Burke defined a political party as a "body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed." According to this definition, a machine is not a political party, for it is a body of men united for promoting by their joint endeavors their personal interest without regard to any principle at all. Of course, in actual practice, most so-called machines are somewhere between this drastic definition and an ideal party organization. Even the worst ones have never been utterly disregardful of the popular will. The above definition, however, is accurate enough to serve all practical purposes.

The organization of a machine

In their organization early political machines differed in no essential respect from the machines which exist today. A machine's chief prerequisite is a comparatively small group of voters in each election district who can be counted on to vote as directed by the leaders. In each such unit, there is a precinct captain or leader, who is responsible to a ward or district leader, who, in turn, is responsible to the big boss. The necessities of vigorous political warfare have evolved this one-man type of organization. It would not do to say that every machine has always had a boss. Sometimes the supreme power is shared by a number of leaders. But most of the successful machines have been ruled by bosses most of the time. The precinct captain has always won his position by his ability to deliver the necessary votes. He holds it by a like tenure; when someone else proves that he can deliver more votes, the job changes hands. The votes which he controls are first of all, those of his own family and its connections; second, the office-holders or would-be office-holders and their families and connections; third, other recipients of favors, who may range all the way from protected thieves and gamblers to the innocent proprietors of street-corner news-stands. The precinct captain usually

acts as the mediary in securing these favors; for example, a boy is arrested, charged with some infraction of the penal code; the precinct captain speaks to the ward leader; the ward leader speaks to the judge; the boy is released; his father, his uncles, his older brothers become followers of the precinct captain. This kind of work on the part of a machine has been praised by some writers as the humanizing of city government. There can be no doubt that there has to go into the composition of a successful precinct captain a lot of rough good-nature and a liking for his fellow-man. On the other hand, it should never be forgotten that the motive with which these virtues are employed is the perversion of popular government. This is seen more clearly in the alliance between the machine and those gangs of roughs which originate in groups of boys protected in their petty depradations by the precinct captain. It is upon these gangs that the machine has relied for the acts of violence in primaries and elections which were often used in the old days to overcome a hostile but peaceful majority.

The spoils system

Machines never could have been built to their full perfection without the spoils system, *i.e.*, the practice of distributing appointive offices as reward for political service. To this no legal bar existed in any American city until 1883. In the colonial period and for nearly fifty years thereafter practically all appointive offices were held for very short, fixed terms—one or two years—but with a strong habit of reappointment. With the rise of the democratic movement, however, the doctrine of rotation in office came into vogue. The popular thought of the Jacksonian era regarded office not as a trusteeship for the public, but as a privilege of the office-holder. With this as a premise, it was easy to reach the conclusion that offices should be distributed as widely as possible. From this foundation, it was but a step to the principle expressed by Senator Marcy of New York,

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during a debate in the United States Senate, "To the victor belong the spoils of the enemy." The ruthless application of this idea for the next half century corrupted politics and ruined administration. From heads of departments to street sweepers and ditch diggers, city job-holders were primarily interested in serving a machine and only secondarily in the performance of their work for the city. That the various municipal services managed to muddle along as well as they did was, under the circumstances, something of a marvel.

Profits of the machine

That the boss and his satraps were not in politics for their health is a truism. Some were doubtless attracted by the opportunity for the exercise of power, but with most of them the motive was the more sordid one of fattening their pocket-books. In this respect, there has been, since 1888, a change in the fashion of machine procedure. The corruption of the old days was cruder and more open. It may even be said that it was more destructive of the possibility of general good government. There have been three great sources of municipal graft. The first of them centered in the police department. It was, and is, a matter of withholding the hand of the law for a consideration. It is a species of blackmail, which has been made infinitely easier by our practice of enacting our moral aspirations into law with little regard to their enforceability. From a very early date in our municipal history, thieves, gamblers, and prostitutes have been made to contribute to the financial well-being of the machine. Sometimes it has been the patrolman on the beat who has pocketed this graft; more often he has been obliged to share with those higher up in the organization. This form of corruption still exists, although, it is believed, on diminished scale. It is doubtful if a new Lexow[1] investigation would dis-

[1] *Report and Proceedings of the Senate Committee to Investigate the Police Department of the City of New York*, five volumes, Albany (1895).

close the degree of police corruption which existed in New York prior to 1894.

A second source of municipal graft has been the desire of business men for favors at the hands of the city government. This has run all the way from the desire to evade ordinances against unloading goods on the sidewalk to the pursuit of public utility franchises valued at many millions of dollars. Those unfamiliar with the ways of municipal politics are often surprised at the favorable attitude of presumably reputable business men toward the machine. It is to be explained by the fact that they find it easier and cheaper to deal with the boss than with the regular city authorities acting openly in the public interest. It is not uncommon to come upon business men who divide their allegiance. They give their vote and voice to the better political influences with which they are naturally associated, but at the same time, do not fail to contribute financially to the machine. Thus they believe they can insure their own welfare, whichever party is victorious. This form of corruption reached its maximum about the beginning of the present century, but it was powerfully operative throughout the whole of the period under discussion. It is now of much less significance than formerly. The regulation of public utilities, which in many states is now conducted by state commissions, changed economic conditions which have rendered many franchises valueless, and the fact that there are few, if any, franchise privileges remaining to be disposed of by cities has removed most of the temptation which led "big business" to corrupt city government.

Raids on the city treasury

A third source of graft has been direct raids on the city treasury. This was its characteristic form in the middle years of the nineteenth century. Sometimes the officers entrusted with city funds stole them. There is now as little of this as there is of stealing by bank offi-

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cers. A half century ago there was much more. Still more frequent were frauds in connection with contracts for the construction of public buildings and other works and the purchase of supplies and materials. It was by such means that the members of the notorious Tweed ring in New York enriched themselves. In the construction and furnishing of the county court house, for example, contractors put their bids at such a figure that they could turn over to the ring fifty to sixty percent of the payment made by the county and still make an exorbitant profit.[1] The fall of the Tweed Ring in New York in 1873 marked the climax of the era of machine corruption. Tweed, who was commissioner of public works, and his associates, Hall, the mayor; Connelly, the controller, and Sweeney, the president of the park board, by juggling the accounts of the city, had succeeded in concealing their frauds for some time. They were finally exposed by the *New York Times*. No such bare-faced robbery of a city would be possible today. Contracts are still sometimes awarded through favoritism, and city officials sometimes become rich by illicit means, but the boldest of them are as timid children in the dark compared with Tweed and his fellows.

The Philadelphia gas ring

The classic description of a city machine is that of the Philadelphia Gas Ring by the late Lord Bryce in his *American Commonwealth*.[2] Speaking of James

[1] The following quotation from G. Myers, *History of Tammany Hall*, 238-239, will give some idea of the extent of this single piece of graft: "But the new County Court House, the *Times* demonstrated, was the chief means of directly robbing the city. All told, so far as could be learned, the sum of $3,500,000 had been spent for "repairs" in thirty-one months—enough, the *Times* said, to have built and furnished five new buildings such as the County Court House. Merely the furnishing, repairing and decorating of this building, it was shown, cost $7,000,000. One firm alone —Ingersoll and Company—received, in two years, the gigantic sum of $5,600,000 'for supplying the County Court House with furniture and carpets.' In brief, the County Court House, it was set forth specifically, instead of costing between $3,000,000 and $5,000,000, as the 'ring' all along had led the public to believe, had actually cost over $12,000,000, the bulk of which was stolen."

[2] Second and subsequent editions, Vol. II, Chap. LXXXIX.

McManes, for many years the boss of Philadelphia, Bryce wrote, "He was appointed one of the Gas Trustees, and soon managed to bring the whole of that department under his control. It employed (I was told) about two thousand persons, received large sums, and gave out large contracts. Appointing his friends and dependents to the chief places under the Trust, and requiring them to fill the ranks of its ordinary workmen with persons on whom they could rely, the Boss acquired the control of a considerable number of votes and of a large annual revenue. He and his confederates then purchased a controlling interest in the principal horse-car (street tramway) company of the city, whereby they became masters of a large number of additional voters. All these voters were, of course, expected to act as 'workers', *i.e.*, they occupied themselves with the party organization of the city, they knew the meanest streets and those who dwelt therein, they attended and swayed the primaries, and when an election came round, they canvassed and brought up the voters. Their power, therefore, went far beyond their mere voting strength, for a hundred energetic 'workers' mean at least a thousand votes. With so much strength behind it the Gas Ring, and Mr. McManes at its head, became not merely indispensable to the Republican party in the city, but in fact its chiefs, able therefore to dispose of the votes of all those who were employed permanently or temporarily in the other departments of the city government—a number which one hears estimated as high as twenty thousand. Nearly all the municipal offices were held by their nominees. They commanded a majority in the Select council and Common council. They managed the nomination of members of the State legislature. Even the Federal officials in the custom-house and postoffice were forced into a dependent alliance with them, because their support was so valuable to the leaders in Federal

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politics that it had to be purchased by giving them their way in city affairs."[1]

Conclusion

The results of the development of city government in the United States to 1888 are indeed best summed up in Bryce's often quoted statement, "There is no denying that the government of cities is the one conspicuous failure of the United States".[2] The era was one of confusion and irresponsibility. The organization of municipal government was complicated to the point where responsibility could scarcely be fixed for misconduct, however glaring. The political conditions were favorable to the domination of machines and bosses. It may be alleged, in palliation of this failure, that universal suffrage democracy was being given its first trial on a large scale under conditions of the greatest difficulty. The half-century from 1840 to 1890 was a long period for the grosser abuses of nominating and election procedure to remain uncorrected. It must be remembered, however, that a machine, once in power, is difficult to dislodge. The predatory politicians were thoroughly entrenched in their organization and it was not until the effrontery of their corruption became unbearable that the interest of the public could be diverted from national to local politics sufficiently to search for and seize upon the remedy. In the meantime, cities had grown in population, had flourished economically and had developed in culture. Machine government, bad as it was, had not been able to check the natural forces of progress. Even men like Tweed in New York and Alexander Shepherd in Washington had lent their support to great schemes of public improvements, extravagantly and graftfully carried out, it is true, but improvements. The cities of 1840 had neither proper pavements, sewers, parks, police departments, or fire protection. The cities of 1888 had all these. We had toilfully

[1] James Bryce, *American Commonwealth*, second and subsequent editions, Vol. II, Chap. LXXXIX.

[2] James Bryce, *American Commonwealth* (1st edition, 1888), II, 281.

climbed up toward some standards of municipal service. Nevertheless, it is true that our city governments were burdened with debt, sodden with corruption and inefficiency. There is no use blinking the fact that we had made a "conspicuous failure" of municipal government.

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Specific cases of corruption are described in the reports of investigating commissions and the memorials of civic organizations. Reed and Webbink, *Documents,* contains the more important portions of the memorial of the New York Citizens Association to the New York State Constitutional Convention of 1867; the report of the Boston Charter Commission of 1884; the report of the New York Senate Committee on Cities, better known as the Fassett Commission, in 1891; and the final report of the Boston Finance Commission, 1909.

CHAPTER VII

THE ERA OF REFORM

Era of reform dates from 1888

WE come now to the era of reform. There is, happily, a certain rhythm in human affairs by reason of which, when they have swung as near as may be to the nadir, they swing up again toward the zenith. It is in the times of bleakest despair that the forces gather which lift the race higher toward its goal of progress. This is only another way of saying that the course of evolution is not to be indicated by a smooth ever-rising curve, but by an irregular line in which only the general trend is upward. It is convenient for our purposes to take the publication of Bryce's *American Commonwealth,* in 1888, as marking the low point in the history of municipal government in the United States and to date from that event the era of reform. This does not mean that up to this point everything was going badly and that from thenceforth everything grew steadily better. It does not even mean that other dates might not, with a good show of reason, compete for selection—for example the downfall of Tweed in 1873, or the adoption of the Brooklyn charter of 1881. The case for 1888 is summed up in the fact that in that year the keenest foreign analyst of our institutions, after a careful survey of the situation, delivered himself of the crushing conclusion already quoted, namely: "There is no denying that the government of cities is the one conspicuous failure of the United States".[1] It does not need to be argued that no competent observer would pass such a judgment today. It must be admitted that the forces which have wrought the change were by 1888 already

[1] James Bryce, *American Commonwealth* (1st edition, 1888), II, 281.

here and there in operation. It must likewise be acknowledged that it was not until some time after 1888 that great improvement in the usual practice of American city government became evident. There is no reason for ascribing to Bryce's work any considerable direct effect upon the situation which he described, although his words led to a good deal of soul-searching among the thoughtful men of the time. We simply have an authentic and unfavorable description of city government in the United States as a whole for the period ending in 1888. We can turn the page and begin the writing of a new story from that date.

Municipal progress: its two phases

The story of municipal progress since 1888 can be told under four heads: (1) an increased popular interest in municipal affairs; (2) changes in the structure of city government, aiming at a concentration of power and responsibility; (3) new or improved devices for popular control, and (4) the development of technical perfection in various fields of administration. The first, second, and third belong to the earlier, or political, phase of the reform movement; the fourth is the essential characteristic of the movement's later, or administrative, phase. In the earlier years of the reform era the efforts of the reformers were directed chiefly at the political regeneration of the cities. They sought to overthrow machines and bosses and to set up decent and representative city government. In recent years, with these ends at least partially achieved, emphasis has been shifted to the administrative aspects of the municipal problem. Efficiency in the performance of the tasks of city administration has now become the goal of idealists. No definite date can be assigned when municipal reform left the one phase and entered the other. Nor has there ever been a time when municipal reformers were not actuated by the desire both for political regeneration and administrative efficiency. In a sense, however, the successful passage of the first phase was a condition precedent to

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entering upon the second. The transition has been gradual, but there can be no doubt that the objectives of municipal reform have undergone a decided change.

Increased interest in city government

The first of the four developments enumerated covers matters fundamental to all governmental progress in a democracy. It is, however, extremely difficult to seize and crystallize in words the huge but formless movements of public opinion. No one can pretend to define the extent of this increased popular interest in the conduct of city government. That it has not been excessive is indicated by the small proportion of the electorate which even now participates in city elections. Its reality, however, cannot be denied. If it has not percolated to the great masses of the voting population, at least it has permeated the intelligent minority. It is to be accounted for by a variety of causes, the exact proportionate influence of which it would be useless to attempt to estimate. Necessity, based on the physical growth of cities and the increasing complexity of urban life, perhaps deserves first place among them. Of the same order is the passing of that exaggeratedly opulent prosperity, accompaniment of the first exploitation of a continent, which made men indifferent to the extravagances of government. When the great drama of western expansion held the stage, men's attention could not be diverted from peopling prairies, boring mountains, leveling forests, to the petty melodrama or low comedy of city politics. The disappearance of burning national issues from the field of politics at least furnished the occasion for a vital change of attitude toward municipal problems. No longer blinded by the overweening importance of victory in national elections, men could confront the issues of municipal politics on their merits. Municipal government henceforth became an end in itself, instead of a means of strengthening a national machine. "Municipal home rule" has been at the same time a consequence and a cause of interest in city affairs. It has in several states

put the responsibility for good government squarely on the shoulders of the people of the city, and with excellent results.

Municipal reform organizations

Nor should we altogether neglect the work of municipal reform organizations and the preachments of municipal reformers. Dana, in the *Sun*, used to rail at what he called the "infantile blubber of the goo-goos," but their work promises to outlive that of the "practical" politicians who scorned them. Such attempts as had been made for municipal reform in the preceding period had been purely spasmodic. Exhausted public patience flared up occasionally in the formation of a citizens' committee or other temporary organization. The Committee of Seventy, created in 1871 to overthrow the "Tweed Ring," is a notable example. As soon, however, as the immediate crisis was past, the public sank back into its habitual lethargy and the organization melted away. In the eighties, however, a new sort of reform organization began to make its appearance actuated by the purpose of exercising a permanent influence on city government.[1] In October, 1892, the City Club of New York was organized with a clubhouse, a large dues-paying membership, drawn from both political parties, and a series of committees on important municipal questions. Late in 1893 the City Club joined with the then recently organized Municipal League of Philadelphia in a call for a National Conference on Good City Government, which met in Philadelphia in January, 1894, and was attended by representatives of a score or more of reform organizations and by public-spirited individuals from various parts of the country. An appendix to the "Proceedings" of this conference[2] describes the organization and methods of forty-six municipal reform organizations, all that are

[1] The oldest such organization with a continuous active existence to the present day is the Citizens' Association of Chicago, founded in 1874.

[2] *Proceedings, National Conference for Good City Government,* 1894, 303-340.

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definitely known to have been in existence at that time. The Conference resulted in the formation of a federative agency for such societies in the National Municipal League, which has sponsored a similar meeting annually since 1895.[1] In the secretary's review of progress at the conference of 1895, he reported an increase in the number of organizations to 180. The following year there were sixty-five percent more. Thereafter definite statistics are lacking, but it is probable that the number of active permanent organizations has never much exceeded three hundred.

Objectives of municipal reform organizations

The organizations of this period were primarily concerned with the rescue of the cities from machines and bosses. They aimed to unite good citizens in opposition to the "grey wolves" of either party. Incidentally, they studied municipal problems, spread information and advocated concrete reforms. These reforms were almost altogether political in their character. Prominent among them were ballot reform, primary reform, and civil service reform. The reform organizations urged the simplification of municipal government and the concentration of power and responsibility. They advocated non-partisanship in municipal politics and, to that end, the separation of state and local elections. These specific objectives have all been largely achieved. The reform organizations also made a great and lasting contribution toward awakened popular interest and informed public opinion. They permanently raised the character level of elective city officers. Their work largely accomplished, they have declined in number, activity and significance.

Types of reform organizations

These municipal reform organizations are divisible into four types. (1) *Distributors of Political Information.* Of this type, the Municipal Voters League of Chicago, established in 1896, is perhaps the best example. It studies and publishes the records of prospective can-

[1] See successive *Proceedings of Conferences for Good City Government*, 1894-1911, and *National Municipal Review* since January, 1912.

didates, approving or condemning them as the circumstances warrant. (2) *Endorsing Organizations.* These societies go one step farther than those of the first type and endorse a "slate" chosen from among the nominees of all parties. The Library Hall Association of Cambridge, Massachusetts, was one of the first organizations to adopt this method and long employed it most successfully. (3) *Municipal Political Parties.* In this category must be placed those organizations which have made a practice of nominating candidates of their own and conducting campaigns on their behalf. The most important member of this group has been the Citizens Union of New York, organized in 1897, just before the first mayoralty election in the greater city. It still continues to battle for good government in the metropolis. Of course, organizations of the second and third type usually also employ the methods of the first. The Citizens Union, for example, not only follows very carefully the conduct of city authorities, but also publishes annually the record of the members of the legislature from New York City, especially with regard to legislation affecting the city. (4) *City Clubs.* Formed on the model of the City Club of New York, these are social clubs of rather inclusive membership. Some of them, notably those of Chicago and Boston, are magnificently housed. These club houses become the centers for many community activities. The clubs bring speakers to address their members on topics of current interest, appoint committees to study important questions, publish information, etc. Directed by trained secretaries, they are a powerful force for good. Because, however, of the very inclusiveness of their membership, they have found it wise to keep from taking sides in elections, but rather to present all sides of controversial questions and trust that truth will prevail. This class of organization is still on the increase.[1]

The development in our schools and colleges of instruc-

[1] See *City Clubs in America*, published in 1922 by the City Club of Chicago.

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Instruction in municipal government

tion in municipal government is not only an indication of increased public interest in city affairs, but is a continuing cause of further interest. In 1890 there was no such thing as an independent course in municipal government in any college in the United States. The first lectureship in that subject was established at the University of Pennsylvania in 1894,[1] and it was not until the beginning of the present century that general recognition began to be given to it. In 1908, forty-six colleges and universities offered courses in municipal government; in 1912, sixty-four, and in 1916, ninety-five.[2] Today there is scarcely a well-conditioned college without at least one such course. Similarly, instruction in city government has found its way into the high and elementary schools. In fact, the emphasis in civics teaching, which twenty years ago fell almost exclusively on the institutions of the nation, has been transferred to those of the locality.

The literature of municipal government

Before Lord Bryce voiced his celebrated criticism of the government of cities, there was in existence not a single work comprehensively and adequately dealing with the subject. A few magazine articles and a handful or two of fugitive pamphlets constituted the literature of the subject. It was mostly as void of scientific method as of constructive suggestions for reform. There are now at least a half-dozen general works available for use as college texts, while the number of books and articles on special phases of the subject is so great and increases with such rapidity that the most eager student cannot keep pace with them. There are four widely circulated periodicals devoted exclusively to municipal government, besides almost countless bulletins of local circulation emanating from municipal leagues, bureaus of research,

[1] James T. Young, *University Instruction in Municipal Government, Proceedings,* Rochester Conference for Good City Government (1901), 226-231.

[2] W. B. Munro, Chairman, "Instruction in Municipal Government in the Universities and Colleges of the United States," *National Municipal Review,* V, 565-573 (October, 1916).

etc. It is true that the greatest of all means of publicity, the newspaper press, fails to give a large share of its attention to municipal affairs, except when they approach the scandalous. In all probability, the great mass of the people have been reached by a modicum only, and that the least valuable part of the published material on city government. The opinion-forming minority, however, have been awakened to some degree of interest and have been given improved standards by which they measure the performances of municipal government.

Changes in the structure of city government

The significant changes in the structure of municipal government during the past forty years have all been in the direction of the concentration of power and responsibility. The years have witnessed the fall of the theory of checks and balances as the guiding principles of the municipal constitution. The two-chamber city council has almost passed into memory. Large ward-elected councils have given way to small councils, many of them elected at large. The short ballot principle has prevailed in the disappearance of independently elected executive officers and the concentration of executive functions in a single authority. The nature of this authority and its relation to the legislative branch or council has been determined in three ways: (1) by enhancing the position of the mayor to one of executive command and political leadership from which he dominates the city government; (2) by vesting the executive functions in the council itself, for this purpose reduced to five or seven members; and (3) by permitting the council to select an executive responsible to itself. The first of these we may call the strong-mayor plan, to distinguish it from the types of mayor and council government in which the council or other elective officers still play a prominent part. The second is best known as the commission plan, and the third as the manager plan.

Devices for popular control of government have been multiplied and perfected during the period of reform. In

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the first place, the suffrage has been extended to women, so that the basis for municipal government is now a truly democratic one. It is very doubtful if votes for women have had much effect upon the character of municipal government. Apparently, women are influenced in politics by much the same motives as are men. The proportion of the earnest and intelligent and of the careless and stupid among women is practically the same as among men. In theory at least, however, the democratic control of government could never have been perfectly secure while half of the adult citizens of the country were disfranchised. To realize how far we have progressed in improved means of giving effect to the popular will in government, it is sufficient to recall that it was in 1888 that the now commonplace "Australian" ballot was first introduced in Massachusetts and in Louisville, Kentucky. It was the "Australian" ballot, printed and distributed at public expense, that gave rise to the necessity for an authentic method of nomination, thus provoking primary reform. In 1888 the direct primary had never been heard of outside of Crawford County, Pennsylvania. On the whole, ballot and primary reform have affected city government rather more directly than that of state or nation. Experimentation has gone further in the local field. Non-partisanship, for example, beginning with the demand for separation of state and local elections, has eventuated in the removal of party designations from the municipal ballot in a steadily increasing number of our cities. This reform has been frequently supplemented by a double election system which ensures an approximation to a majority choice by eliminating at the first polling all but two candidates. And from these beginnings, cities are going on to preferential voting and proportional representation. The adoption of the merit system has removed to a large degree that undue stimulus to party activity which lies in spoils. The initiative, referendum, and recall have been widely applied in city

New devices for popular control

government to enforce the responsibility of elective officers to the people.

Municipal progress; second phase

All of this progress belongs to what, for convenience, we have called the first or *political* phase of the era of reform. As has been said, we are now living in the second or *administrative* phase. This does not imply that the work of political reform is done, or ever will be. Our Revolutionary forefathers were accustomed to remind themselves that "eternal vigilance is the price of liberty". It certainly is the indispensable legal tender for freedom from the abuses of politics. We have no reason to believe that we have happened on the final perfection of municipal organization. But, if we had, no system of government has been devised which will work itself. If, through the indifference of good citizens, the ill-disposed are left to work it, the consequences are bound to be disastrous. We have, however, passed that period of desperation in which there was no thought to spare from the life and death struggle with the forces of political corruption. Those forces have now been, for some years, sufficiently under control to allow leisure for attempts to perfect the technique of administration.

Perfection of administrative technique

Oddly enough, the perfection of administrative technique has had even greater effect in limiting the power of the politicians over the detailed management of cities than any other one influence. In accounting, education, engineering, public health, and several other branches of municipal activity, the advance in scientific knowledge and its applicability to municipal conditions has been prodigious. The complex and technical problems of such highly developed services not only cannot be handled well, but in many instances cannot be handled at all, by laymen. The politicians have learned that to ignore professional skill is to court disaster, and though they continue to reserve for themselves some of the choicest official "plums", they are disposed to leave the actual operation of the technical branches of the administration

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to those who know how to conduct them. Once in the saddle, the expert tends to expand his influence. He "knows" and the lay officers with whom he comes in contact "do not know"; they have to yield in most matters to his judgment, while professional pride and zeal lead him constantly to seek new avenues of influence. Our great cities, therefore, now possess more or less well-developed municipal bureaucracies which, making every allowance for the defects of bureaucracies, conduct the administration in accordance with standards relatively very high as compared with those of 1888. Changes in the political domination of New York, for example, are no longer accompanied by material fluctuations in the quality of the major city services. In this progress, civil service reform has played no inconsiderable part. Existing in 1888 only in a few cities in New York and Massachusetts, the "merit system" is now in use in all the larger cities of the country, where it is generally applied to all but the very highest positions. In recent years, scientific methods of personnel selection have been widely employed by city civil service commissions. Thus, the same movement has removed the temptation of spoils from the politicians and developed an administrative personnel to which they are more and more forced to leave the actual management of many of the most important functions of city government.

The research movement

The present activities of those interested in good city government are directed in great part along lines which may be characterized as "research" in contrast with the "reform" movements of an earlier day. In 1906 there was founded, in New York, the first "Bureau of Municipal Research." There are now a score of such organizations, supported by private subscription and devoted to a study of the processes of administration. Their primary method is to keep city officials to a better performance of duty by friendly suggestion of improved methods. For this reason the great majority of even their most

elaborate studies are never published for general circulation. It is only where all other means fail that they appeal from official to public by openly describing his shortcomings. In no event do they take sides in elections.[1] In several cities there are research organizations supported from public funds as integral parts of the governmental system. Some of these, notably the Boston Finance Commission, appointed by the governor of Massachusetts, and the Chicago Bureau of Public Efficiency, have rendered very great service in checking extravagance and improving methods. In general, however, they have proved less independent, thorough, and scientific than the privately supported bureaus. Research has also become an important part of the work of some City Clubs, organizations like the Citizens Union of New York, and even an adjunct of party organizations, as, for example, the Political Research Bureau of the Republican County Committee of New York. There are, besides, several state and national research organizations, like the Ohio Institute for Public Efficiency, the Institute for Government Research,[2] etc., which at times enter the field of municipal administration.

Surveys and other sources of administrative data

It is now widely recognized that a starting point for improvement in the government of a city must be, in many cases, a general survey and appraisal of all its governmental activities. Very thorough surveys have been made of several cities, among them Indianapolis, Rochester, St. Louis, Richmond, Denver, Columbus, San Francisco, and Cincinnati. The published reports of

[1] Among the most important of these organizations are the National Institute of Public Administration (successor to the New York Bureau of Municipal Research), the Detroit Bureau of Governmental Research, the Municipal Research Bureau of Cleveland, the Public Service Institute of Kansas City, the Rochester Bureau of Municipal Research, the Bureau of Municipal Research of the Minneapolis Civic and Commerce Association, and the Philadelphia Bureau of Municipal Research. For the purpose of stimulating citizen interest, all publish at intervals bulletins or reports concerning the more general aspects of administration and finance.

[2] See especially the studies of the Bureau of Public Personnel Administration of the Institute for Government Research in the field of personnel administration.

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these comprehensive studies are a mine of information for students of municipal government. Taken together with the reports of research organizations and other studies of special fields of municipal administration, they now furnish a sufficient body of information to form the basis of a real "science" of municipal administration. As much of this material, however, is not available in published form, there is great need of a central clearing house through which the inquirer might tap the resources of the bureaus. Various projects for such a national organization have been proposed but nothing worthwhile in that direction has yet been accomplished. Some of the bureaus, however, exchange their mimeographed or typewritten reports.

The nature of research

The criticism is sometimes made of bureaus of research that what they do is not really research. This is in a measure true. A great deal of their activity has to do with finding hurried solutions for immediate problems. In many cases, of course, their suggestions are based on some general theory by no means scientifically tested, or even on more or less inspired guesswork. In an increasing number of instances, however, the suggestion is based on that body of reported experience to which reference has been made in the preceding paragraph. Each experiment becomes, in its turn, a reported experience, and thus the fund of scientific data grows. What the research bureaus are doing may be most aptly characterized as *applied* research, in contrast with that pure research which seeks truth for its own sake independently of practical objectives. Municipal research of the latter type is confined almost altogether to the universities, and too little of it is attempted there.

Training for research

The development of the research movement has naturally created a demand for "researchers", men of university training, supplemented by practical research experience. Here has been formed a new field for the "Ph.D." in political science. Furthermore, each of the

larger bureaus is at the same time a place of training for research workers. The National Institute for Public Administration formerly maintained a "Training School" in which young persons received a combination of practical and academic education in governmental research and administration. This effort has now been abandoned and students are left to seek their academic training altogether in the colleges and universities. Some of these, notably Syracuse and Michigan,[1] have special graduate courses for training in municipal administration. Most of the larger bureaus take on "apprentices" who have completed their academic course. These apprentices are assigned to work under more experienced members of the staff with a view to preparing them to work by themselves. In some of the bureaus this work is formally organized as a branch of the larger work of the bureau.

Nowhere is the changed character of municipal reform more evident than in the meetings of the National Municipal League. In the organization's earlier years, these meetings were attended largely by prominent citizens whose interest in municipal affairs, though vigorous, was unprofessional. They read papers to one another on the duties of citizenship, the evils of partisanship, the essentials of primary reform, etc. Today these meetings are attended almost exclusively by highly trained and salaried specialists—employees of research organizations, secretaries of civic organizations, city planners, university professors, and city officials. The programs are devoted largely to rather technical discussions of financial procedure, traffic regulation, government of metropolitan areas, etc. The prominent citizens continue to finance the forces of municipal reform, but the problems have become too specialized for them to take more than a minor part in the discussions.

We have definitely passed the point where it is neces-

[1] See also Chap. XIII.

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The results of municipal reform

sary to struggle for simply honest and tolerably representative municipal government. The government of American cities today will compare favorably on these points with the government of cities in any country in the world. The same is true if we compare the sound performance of most of the fundamental services of city government. Wherever a lavish expenditure of money comes into play, as in most public works and in the application of mechanical devices to city service, we lead the world. In the matter of expert personnel, we are still behind England and Germany. We lack the advantage of effective supervision or control, especially of the activities of small cities, by the experts of the central administration which prevails in England and the continent. In consequence, good results in city government perhaps cost us more than similar results abroad; but we are, in general, getting good results. It is possible to name American cities which, for coherent efficiency in administration, might well be accepted as models by the cities of Europe. In fact, the air of contempt with which the English particularly were wont to regard American cities is wearing off. It has even been seriously suggested, in an important report on local government, that a professional general executive, like the city manager, might profitably be introduced in English cities.[1]

Graft

Graft has not altogether disappeared from our city government, but it is a cautious and timid thing compared with the monster of the days of Tweed. It no longer insolently demands "What are you going to do about it?" Outside of the police department, it has ceased seriously to corrupt administration. There is still enough latitude between the letter of our penal statutes and the public demand for their enforcement to open the way for endless grafting upon law breakers. Sometimes the proceeds percolate up to the superior officers,

[1] See memorandum by Sir Albert Gray in *Report of Royal Commission of London Government*, 1923.

or the bosses, but in most cities graft and its profits are confined to a few of the rank and file of the police force. In some of our largest cities, the boss still profits by the campaign contributions of those who expect favors or fear reprisals, or by a carefully concealed share in favorable contracts. The boss is, however, by no means the universal phenomenon of forty years ago, and where he continues to exist, he most often "assumes a virtue if he hath it not". In respect to graft, city government is rapidly approaching the norm of large private corporations, most of which, by the way, are not, nor ever have been, graftless.

Present weaknesses of city government in the United States

The cause of greatest anxiety for the future of American city government lies today in continued popular indifference to city elections.[1] Apart from this underlying source of fear, the success of city government is most seriously threatened, not by graft, but by a tradition of easy-going government which is deeply embedded in the American democracy. The whole energy of the present phase of municipal reform is directed straight toward the carelessness and inefficiency which this tradition breeds. Before, however, the value of expert service can be "sold" to city officials, it must be sold to the public, and the American public is still shy of the expert. It suspects him as a ruthless experimenter or a hare-brained theorist. Its idea of an expert is a white-coated laboratory worker, surrounded by gleaming instruments, inoculating a helpless rabbit with something deleterious to rabbits. It does not want to be in the rabbit's place. The people need to be taught that, in city affairs, the expert is simply one who knows how to do the particular job entrusted to him, and that the only universal formula for good administration is to put it in the hands of those who know how to administer. It is in this one respect that European city governments, as far as structure is concerned, surpass ours. In all their diversity of

[1] The extent of this evil is fully discussed in Chaps. II and XIV.

forms, they are alike in making room for the expert, if not in the actual direction, at least in the supervision, of every important service.

REFERENCES

On the first phase of municipal reform, the best source of information is the series of conferences for good city government, 1894-1911, in which the proceedings of the annual meetings of the National Municipal League are recorded. Since that date, the *National Municipal Review* has taken up the tale of struggle and progress. The publications of the numerous local agencies for reform are, of course, very interesting, but unfortunately are not generally available for the earlier period. It is impossible here to make particular note of the flood of literature which the era of reform brought forth. Its increasing volume can be grasped by comparing: (1) *Bibliography of Municipal Government and Reform,* appended to the Proceedings of the National Conference for Good City Government (1894); (2) R. C. Brooks, *A Bibliography of Municipal Problems and City Conditions* (second edition, 1901); and (3) W. B. Munro, *A Bibliography of Municipal Government in the United States* (1915).

For references on nominating and electing machinery, changes in the forms of city government, etc., see references appended to the succeeding chapters of this book.

On the development of the research movement, see G. A. Weber, *Organized Efforts for the Improvement of Administration in the United States* (1919), and "Citizen Agencies for Research in Government," *Municipal Research,* No. 77 (September, 1916). Detroit Bureau of Governmental Research, *The Citizen and the Government* (1924) gives a concrete picture of the activities of a successful bureau.

Among the surveys, the most significant are those of St. Louis (1910), Rochester, (1915), San Francisco (1916), Indianapolis (1917), all made by the New York Bureau, and that of Cincinnati (1924), directed by L. D. Upson. A stupendous volume on the *Government of the City of New York* was prepared in 1915 by the New York Bureau and Commissioners of Accounts for the constitutional convention of that year.

Publications of the more important research bureaus are very valuable. The New York Bureau published ninety-five numbers of *Municipal Research* from 1906 to 1921. Reviews of the work of this bureau are to be found in *Six Years of Municipal Research for New York City* (1912); *Ten Years of Municipal Research* (1917). Among current periodical publications, the Detroit Bureau of Governmental Research's *Public Business,* published at irregular intervals, is the most important. Among the briefer leaflets published are Kansas City Public Service Institute, *Public Affairs;* Philadelphia Bureau of Governmental Research, *Citizens' Business;* and San Francisco Bureau of Governmental Research, *The City.* The Chicago Bureau of Public Efficiency has issued a long and very valuable series of reports on a wide variety of topics.

The research workers maintain a Governmental Research Conference

of which Mr. Arch Mandel, of the Dayton (Ohio) Research Association, is secretary. There is also a National Association of Civic Secretaries.

The call for the first Conference on Good City Government, resulting in the organization of the National Municipal League, and the first constitution of the League, are published in Reed and Webbink, *Documents,* which also contains the charter provisions establishing the Boston Finance Commission and the Baltimore Department of Legislative Reference and materials illustrating the organization and aims of several municipal reform organizations.

CHAPTER VIII

THE CITY IN THE STATE

The need of local government

IT is impossible to govern a whole country exclusively from a single center. It is nowhere attempted. To do so would mean, in the words of Lammenais, "apoplexy at the center and paralysis at the extremities". All modern states are divided and subdivided into local units.[1] These units exist for one or both, usually both, of the following purposes: (1) the convenience of the central government in carrying out its functions; (2) the satisfaction of purely local needs which can best be determined by the elected representatives of the locality. Even where, as is often the case, the same authorities perform both sets of duties, the distinction between them does not cease to exist. In all countries numerous state functions are left to be carried out by locally elected officers, under the more or less effective supervision of the central government. In no country are locally elected officers permitted to exercise unrestrained discretion in providing for the satisfaction of local needs. Where the functions undertaken directly by the central government are relatively numerous, and the degree of central control over the agencies of local government relatively great, as in France, we speak of that state as "centralized".

[1] In our states, the primary division is into counties which, in their turn, are made up of cities (and in some cases villages) and towns or townships. In England, from which country the main outlines of our system were originally derived, there are counties, boroughs (the larger boroughs are usually counties by themselves), and urban districts for the urban population, and rural districts and parishes for the country folk. France is divided into departments which, in turn, are divided successively into *arrondissements* (districts) and *communes*. The latter correspond to our cities, villages, and townships, there being but one form of organization for urban and rural communities alike. In Prussia, the several provinces are divided into districts (*Bezirke*), the districts into circles (*Kreise*), and the circles into urban *Städte* (cities) and rural *Gemeinden* or communes.

The word "centralization" is anathema to the American public, which is inclined to pride itself on the possession of an extent of local self-government quite unrivaled in other countries. In fact, however, we differ from other countries not so much in the extent as in the kind of central control under which our cities operate.

Importance of the city as a unit of local government

Among these units, the city has become by far the most important. It is the medium through which many states reach the greater part of their people. The local needs which it is called upon to satisfy are infinitely more numerous and complex than are the requirements of rural society. Indeed, from the point of view of daily provision of indispensable services, the city surpasses in importance even the central government. The people of Detroit, for example, might get on very well for some weeks or even months if all activities of the government of Michigan were suspended. Without, however, the police protection, water supply and sewer system which the city provides, life would within a day or two become hazardous if not impossible.

The city as a creature of the state

Until the rise of the Roman Republic, the cities of antiquity, with the bits of territory immediately around them, had been independent, or quasi-independent, states. The Romans, however, found it necessary to devise a status for their numerous provincial cities which recognized their corporate existence and allowed them some measure of autonomy. Their powers of self-government disappeared under the empire, but the concept of the city as a corporation possessed of many of the characteristics of an individual, including the right to own property and to sue and be sued, remained the permanent contribution of Rome to the development of municipal government. In the years of disintegration which followed the fall of the Roman Empire, cities practically disappeared in Europe. Those that did manage to maintain a struggling existence fell under the control of some feudal lord. When, with the revival of commerce, cities

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sprang up and developed wealth and power, they wrung from the financial or military necessities of their overlords recognition of their corporate existence and a substantial measure of independence, expressed in grants or "charters". The feudal system had grown up to meet the needs of a purely agricultural society. Thriving cities filled with busy merchants and artisans never fitted into it. They required their own systems of law, land tenure and taxation, administered by their own officers. All these things were commonly secured them by their charters, together with the right to own and manage the common property of the city in the common interest, to regulate trade and make rules for the good order of the community. Space is lacking here to trace the rise of the medieval cities and their eventual subjection to the powerful monarchies of the seventeenth and eighteenth centuries. It is sufficient for our purposes to record that, under these monarchies and the democratic national states which are their successors, cities have remained local corporations deriving their rights and privileges from the sovereign power of the state and subject to the limitations and duties the state chooses to impose on them.

Corporate rights and liabilities in America

The rights which a city enjoys as a corporation are everywhere much the same. The right to use a common seal, to sue and be sued under its own name, to make contracts and to acquire, own, and dispose of property are the most important of them. A city, like all other corporations, is incapable of acting except through agents. A private corporation is, in accordance with the legal doctrine of *respondeat superior,* held responsible for practically every act committed by its agents in its service. The liability of the city to answer for the acts of its agents is a matter not so easily described. The city is liable to the same extent and in the same manner as is a private corporation for contracts legally made in the exercise of powers granted it by the state. In general,

however, the courts are unwilling to hold city contracts valid unless all the formal steps which the charter requires for making them have been faithfully observed. Where an individual is injured in person or property by the act of some officer or employee of the city, the city is sometimes liable. In the case of tortious [1] injuries it is liable, speaking generally, where the act is committed in the performance of a "proprietary" or "corporate" function and not liable where it is in the performance of a "governmental" function. This distinction corresponds in a way with that between the powers which the city exercises for the satisfaction of local needs and those which it exercises on behalf of the state. The state in Great Britain and the United States is never liable for the torts of its agents. Private corporations are generally so liable. The liability of the city represents a compromise between these two legal principles.

Difficulties of the subject

The difficulty with this subject, from the student's point of view, is that the courts of the several states have achieved no uniform classification into "corporate" and "governmental" functions. There are some activities, such as police and fire protection, poor relief, public health, education and the maintenance of parks and public buildings, which are practically always treated as governmental. For nothing that happens in the performance of these functions, no matter how unreasonable or careless the agents of the municipality may be, is the city liable. Thus, where the mayor of a city appointed as a special police officer a man known to be of ungovernable temper and vicious disposition, who brutally assaulted a citizen, putting out his eye and otherwise injuring him, the city was not liable.[2] A fire set by the sparks allowed to escape from a steam fire engine, through the negli-

[1] Such injuries are known as "torts". Speaking roughly, a tort is a violation of a personal or property right not founded in contract. The commonest form of tort is a personal injury intentionally or carelessly committed. It violates the right of the individual to be free from intentionally or carelessly wrought harm.

[2] Craig *v.* Charleston, 180 Illinois 154.

gence of the engineer in charge, brought no liability on the city.[1] Nor could the proprietor of a hotel, driven out of business by the unjustifiable quarantining on his premises of seventeen persons as yellow-fever suspects, obtain a penny of damages from the city.[2] Only one state supreme court has made a breach in the barrier which the doctrine of non-liability in the conduct of governmental functions presents to the injured party. This was the Ohio supreme court, which in 1919 held that the city of Cleveland was liable for the negligent operation of a fire-truck returning from a fire.[3] In general, the only remedy for a party injured incidentally to one of these governmental functions is an action against the officer who committed the injury. Such actions, even if successfully prosecuted, usually mean very little in the way of compensation for the damage suffered. Most city officials are poor men, against whom a judgment cannot be collected, and a non-collectible judgment is cold comfort for a suffering plaintiff.

There are other activities, for example the operation of public utilities and the administration of income-producing property, which are generally recognized as corporate. If a city operates a street railway, an electric light plant or a waterworks, it is liable for the acts of its employees just as if it were a private corporation engaged in the same enterprise. But many matters, notably those relating to streets, including sidewalks, bridges, and sewers, fall within a twilight zone of doubt, being classed one way in one state and another way in another and by no means always treated with logical consistency in the decisions of the same court. If any general rule can be laid down it is that the city is not liable for failure

[1] Hayes *v.* Oshkosh, 33 Wisconsin 314.
[2] City of San Antonio *v.* White, 57 S.W. 858.
[3] Fowler *v.* Cleveland 126 N.E. 73. New York City was held liable in the federal courts for the negligent operation of a fire boat. Workman *v.* New York City, 179 U. S. 552.

to provide pavements, sidewalks, bridges, sewers, etc., nor for defects in their design, but it is liable for negligence in their maintenance. A sewer may be built too small to do the work demanded of it with resultant damage to property. Yet there is ordinarily no liability.[1] If, however, a city allows a sewer to become blocked, or there are defects in its construction (not due to the design), it is usually subject to damages for any injury which follows. The exceptions, however, are almost as important as the rule, and to know the situation in any one state, one must consult the decisions of that state. Cities are seldom liable for acts, except contracts, which involve the discretion of the governing body. For example, they are not liable for failure to enact an ordinance or for making an ordinance or regulation which, by its unwisdom, causes injury. Nor, what is more curious, are they liable for failure to enforce an ordinance. When a New York boy was killed by a swine running at large in the streets of that city in defiance of the ordinance, the boy's father was unable to recover from the city.[2] Cities are not ordinarily liable for their failure to abate nuisances or to provide services, since action in these matters involves the exercise of discretion. On the other hand, cities are almost invariably liable for injuries which result from riotous disturbances which occur within their limits.

In Europe

On the continent of Europe, the liability of municipalities is much more generously conceived than with us. It is, in general terms, as broad as the city's field of activity. The French communes, for example, are responsible for damage caused by their agents irrespective of whether the act took place in the administration of the city's property or services (*acte de gestion*) or in the

[1] But where a sewer was so constructed as positively to cast water on the plaintiff's premises, the city was held liable in Ashley *v.* Port Huron, 35 Michigan 296.

[2] Levy *v.* Mayor, 1 Sandf. 465.

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performance of a strictly governmental function (*acte d'autorité*). This responsibility is enforced by the ordinary judicial tribunals rather than the administrative courts.[1] It has been admitted in the case of a person wounded by a policeman who, in the performance of his duty, fired on a crowd. The city of Paris was held responsible for injuries resulting from the fall of a footbridge at the exposition of 1900, when its only fault was a not sufficiently rigorous inspection of the structure. Marseilles was held liable for damages resulting from a sand slide, its only act having been to grant a permit to a contractor to excavate.[2]

Who should bear the burden of injuries incident to administration?

All this suggests that, perhaps, in the United States we permit the individual to bear too much of the burden of those injuries which are, after all, the inevitable accompaniment of municipal administration. Many thoughtful students are coming to believe that, since the city functions in the interests of all, the incidental damage which its operation inflicts should be borne by the community rather than by the person on whom the injury has accidentally fallen. A fire engine, hurrying to answer an alarm, skids on wet pavement and crushes the leg of a little schoolgirl innocently watching from the sidewalk. In such a case, there is no fault on either side. The city is not liable because the work of the fire department is classed as "governmental". The driver of the engine is not liable because he was not careless or, as the courts say, "negligent". The community, however, is in the long run the gainer from the swift operation of fire engines and it is not unreasonable that it should pay the whole cost of it, including such items as reasonable compensation for the child's injury. This, of course, goes much beyond the rule of liability for even a French

[1] The latter are the courts in which actions against the state, based upon the invasion of private rights, are tried. On the continent of Europe the state holds itself liable for the torts of its agents, but provides special administrative courts for the purpose.

[2] H. Berthélemy, *Traité Élémentaire de Droit Administratif*, 9e edition, 579 *et seq.*

city, where some fault on the part of the agents of the city is an essential element.[1]

Source of municipal powers: the charter

In most parts of the world, the organization and powers of city governments are now determined by statute. The principal states of continental Europe have each adopted a single broad and comprehensive statute applying to all their cities, exception being made in certain cases of the capital.[2] Since 1835 the organization and general powers of English cities have been provided for by a "Municipal Corporations Act." This act, however, does not purport to cover all the powers and privileges of every city. Special powers and privileges are conferred on particular cities by means of acts of Parliament passed in accordance with peculiar procedural requirements thereinafter described. In the United States the creation and regulation of municipal corporations is one of the powers left to the several states. Some of them group their cities into classes according to population and provide for the government of each class by general law. Others make a practice of enacting special acts or "charters" for each city. Still others permit the people of the city to elect a board of freeholders or charter commissioners to prepare a document which, upon ratification by vote of the people of the city, becomes the charter of the city. Only one state, Illinois, follows the European custom of a single law for all cities.

In most countries other than the United States, the powers which the legislature may confer on cities are limited only by its own discretion. In this country the state legislatures are restricted by the constitutions of the state and nation. No legislature can give powers which it does not itself possess. A typical case is that

[1] For an authoritative statement of the theory of community responsibility, irrespective of fault, see Léon Duguit, *Transformation de Droit Public* (1913).

[2] For example, the French *Loi sur l'organisation municipale* du 5 avril 1884, and the Prussian *Städteordnung für die sechs östlichen Provinzen der Preussichen Monarchie* vom 30 Mai 1853. Paris and Berlin, however, are governed by special acts.

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of Loan Association *v.* Topeka,[1] where the Kansas legislature authorized the city of Topeka to bond itself in the sum of $100,000 to assist in the establishment of a bridge-manufacturing company. The city subsequently defaulted on its bonds and the Supreme Court of the United States held that the whole proceeding was invalid because the proceeds were used not for a public but for a private purpose, to which the people could not lawfully be made to contribute by taxation. To go further into this subject, however, would involve the reader in some of the nicest problems of constitutional law which relate rather to the powers of state legislatures than city councils.

Legislative control

While in all countries the powers of cities are derived from law and it is to the law that we must look for the ultimate definition of all municipal authority, the control of municipal activities is actually accomplished in England and the United States by a method quite different from that employed in the states of continental Europe. The reasons for this difference have their origin in the very distant past. England became a national state with a relatively vigorous central government at a time when all administration was conducted in judicial forms. Royal authority was, indeed, made effective throughout the kingdom by means of the judges of the king's court, who applied everywhere a uniform rule of law. At a later period, when Parliament began making laws in the modern sense, it relied in securing uniformity in their execution upon making their provisions so detailed as to leave as little discretion as possible to local authorities. The courts were depended on to compel obedience to the law on the part of these local officials, over whom neither Parliament nor the Crown had much direct power. As it became necessary to broaden the sphere of local government it became the practice to grant powers to municipalities piecemeal, often surrounding them with detailed

[1] 20 Wallace U. S. 655.

prescriptions as to how they should be exercised. The minutia of this detail is well illustrated by the charter of New York City, which contains 1725 sections and more than 425,000 words, or two and one-half times the bulk of this volume. For those functions which the municipality is to perform for the state, reliance is likewise chiefly placed on a minute legislative definition of the duty of the city and its officers. The enforcement of obedience to these commands is left to the courts which, for this purpose, are armed with the writs of mandamus, injunction,[1] quo warranto and certiorari. By the first of these writs, the officers of the city can be forced to perform a duty, provided it does not involve the exercise of discretion. By the second, they can be prevented from committing acts forbidden by law. By the use of the third, the right of any person to hold an office can be tested. By the last, the decisions of officers or boards in a variety of matters can be brought before the courts for review as to their legality. The validity of any act of the city council or any other agent of the city is thus ultimately a question for the courts. In deciding cases involving the powers of a city, the courts apply a principle of interpretation which lies midway between that applied to acts of the state legislature and to those of private corporations. In regard to the former, the courts are disposed to resolve every doubt in favor of the right of the legislature. In the case of private corporations, they put on the corporation the burden of proving that each attempted exercise of power is authorized by its charter. While the courts are stricter with city councils than with the legislature, they are fairly liberal in allowing the exercise of powers reasonably to be implied from those specifically granted.

On the Continent, effective national states came into being much later than the English monarchy and at a

[1] This equitable writ has largely displaced the old common law writ of "prohibition", even in this field of administrative regulation.

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Administrative control

time when administration in the modern sense of the word was already important. The centralizing policies of Richelieu and Colbert were effected by means of administrative officers, sent from Paris to rule in the provinces. Powers of self-government were successfully conferred only in the nineteenth century and as a modification of an otherwise totally centralized system. What more natural, then, than that the law should confer on cities, in broad, general terms, the power to regulate their own concerns, subject to supervision and veto by the superior administrative authorities? The French municipal code declares: "The municipal council conducts, by its deliberations, the business of the commune".[1] The prefect of the department, however, an officer appointed by and responsible to the central government, possesses a veto on all its more important acts, including loans and items of expenditure in the annual budget.[2] Certain municipal expenditures are made obligatory—nineteen categories of them in France itself and an additional one in the colonies—including education, police and elections.[3] If the council fails to appropriate sufficient funds for any of these purposes, the prefect, or, in the case of cities with an annual revenue of more than three million francs, the President of the Republic, may write them into the budget with the same effect as if they had been placed there by the council itself.[4] The *maire* of a French commune is charged by law with the conduct of police matters, including the making of regulations, but his every act is exposed to the veto of the prefect who may also act directly for the enforcement of law where the mayor fails to perform his duty.[5]

At first glance such a condition of tutelage appears to Americans as the negation of self-government. Asso-

[1] *Loi sur l'organisation municipale* du 5 avril 1884, Art. 61.
[2] *Ibid.*, Art. 68.
[3] *Ibid.*, Art. 136.
[4] *Ibid.*, Art. 149.
[5] *Ibid.*, Arts. 91, 94, and 95.

ciated in the popular mind with the dictatorial usurpations of the first and third Napoleons, it has seemed a fitting instrument of tyranny. In fact, however, the field within which a French municipality may initiate policies is much wider than is the case with most American cities, and it is by no means the custom for prefects inconsiderately to thwart the will of the city council. In fact, the political influence of the city council at Paris often makes him very reluctant to interfere with its proposals. The system of administrative control has the great advantage of flexibility. Leaving out of account, as we may now safely do, the chance of the arbitrary exercise of authority, the question as to whether or not a city shall exercise a particular power is settled on its merits by a well-trained and competent representative of the central government. Legislative control is at best rigid and difficult of adjustment to the needs of particular situations. It may be compared to a cast-iron mold which is large in some places but tight in others and often tight in the wrong places. An excellent example of this truth is to be found in the constitutional or statutory provisions which limit the taxing and borrowing power of cities in certain states to a fixed percentage of their assessed valuation. A ratio which will provide an ample revenue for one city will spell penury for another. There is no constant relation between valuation and necessary expenditure. In Ohio, city taxation has long been limited to one percent of the assessed valuation, under which limitation several of the large cities of the state have become practically bankrupt.

Their results compared.

(1) Local self-government

The only way of reconciling legislative control and flexibility is by a wide use of special acts for particular places and situations. This accounts for the practical non-existence of comprehensive municipal codes in the United States and for the fact that in England a great body of special legislation supplements the general provisions of the Municipal Corporations Act. Resort to

Reconciling legislative control and flexibility

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special legislation is a practice fraught with grave danger of abuse.[1] These dangers have been avoided in Great Britain by the evolution of a special procedure for private bills. Every such measure is, if opposed, the subject of a judicial inquiry before committees of the Lords and Commons, whose decisions are, except in the rarest of instances, accepted without question by the respective houses. In America no such development took place and special legislation became an evil of prodigious proportions. We had legislative control at its worst, arbitrary, inconsistent, the product of legislative log-rolling and irresponsible local influences. This led to constitutional prohibitions against special legislation. From the dilemma thus created certain states have escaped by the demarcation of a sphere of activity for the city from which the power of the legislature is excluded and within which the city is guaranteed the right to govern itself. Where such "home-rule" prevails there is perhaps a more substantial local autonomy than under the European system of administrative control. In the remainder of our states, the great majority, the actual degree of municipal freedom is not much different on one side of the Atlantic than on the other. On the whole, however, the European cities are controlled more intelligently than ours.

(2) The city as an effective agent of the state

Satisfactory relationships between city and state are, however, not altogether a matter of liberal opportunities for self-determination. The city is not only a means for the satisfaction of local needs, but an agent of the state. In the latter capacity, it should enjoy no such freedom as will impair the efficiency of the functions entrusted to it. Our states have imposed numerous duties on cities, for example with regard to enforcement of law. While our judicial machinery is ample to prevent the doing of illegal acts by city officers, it is quite helpless to compel them to perform duties which include the least exercise

[1] See Chap. V.

of discretion. The result is that many laws, of which the prohibition statutes are the most striking example, are enforced or not, as the local sentiment of each city determines. Nothing in our governmental system strikes a continental European with so much astonishment as this local option in the enforcement of state laws. There can be no doubt that administrative control results in a more vigorous and effective execution of the functions of the state.

The existing relationship between city and state in England presents a patchwork compromise between the two principles of legislative and administrative control. The relation of local and central governments is still fundamentally a matter of statutory rules judicially enforced. Upon this basis, however, have gradually been introduced numerous and far-reaching powers of control by executive departments of the central government. The chief of these from the above point of view, the Ministry of Health, has very extensive powers in the fields of poor relief and public health, a veto on municipal borrowing and a power of audit over the financial transactions of all units of local government except boroughs. The Board of Trade has authority in the matter of municipal utility undertakings, the Home Office in police administration and the Board of Education in the conduct of schools. These central departments influence local government sometimes by mandatory order, sometimes by withholding, or threatening to withhold, grants in aid of particular services, but more often by wise counsel. Furthermore, there has been entrusted to them by statute extensive and widely used powers of legislation, by means of "provisional orders". This was done partly to relieve Parliament and partly to provide a cheaper and speedier procedure than that for private bills for the benefit of local authorities desiring extension of their powers. Instead of a formal trial before a committee at Westminster, required in the case of a pri-

The existing relation of local and central authorities in England

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vate bill, the department conducts an informal investigation on the ground. Special orders are grouped in a single provisional order bill and are usually ratified without opposition. Speaking broadly, almost anything which Parliament can do by private bill can now be done by a provisional order of some department which, when ratified by Parliament, has the effect of law.

The beginnings of administrative control in the United States

It is not to be inferred from the foregoing that there are no examples of administrative control of local government in the United States. In some instances, departments of city government are directly administered by state officials, for example the police departments of Boston, St. Louis, Baltimore, and some other cities. Privately owned public utilities are regulated by state commissions in several of the states, thus excluding the city from what was formerly one of its most important and abused functions. The Massachusetts civil service commission conducts examinations on the basis of which a large part of the administrative personnel of the cities of that state are appointed. The civil service commissions of New York cities operate under the supervision of a state civil service commission. State health authorities frequently have important powers of command over local authorities in relation to the pollution of lakes and streams and other matters of sanitation. They also supervise the functioning of local health officers, and in times of danger from epidemic, may act directly to supplement local effort. State departments of education in a few states, notably Massachusetts and New York, have power to control in many ways the action of local school boards, by enforcing standards and otherwise. State officers are sometimes vested with authority to require reports of the financial transactions of cities and to prescribe the form of these reports. In a very few states, this power also covers some genuine investigation and audit of local accounts. Boston, in particular, has a "Finance Commission" appointed by the governor,

with full power to investigate and report to the legislature on the conduct of the city government. In Indiana, the State Board of Tax Commissioners has power, on petition of ten taxpayers, to review the budget or proposed bond issue of any city, village or county and reduce the one and veto the other.[1] This is in very marked contrast to the arbitrary "one percent law" in the neighboring state of Ohio. Finally, a few states give the governor power to remove local officers. This power, when possessed, is rarely exercised, although a great deal of publicity has been given to some notable removals,—for example, the removal of the President of the Borough of the Bronx by Governor Hughes of New York and of the mayor of Massillon by Governor Donahey of Ohio.[2] Even more important than those cases in which state administrative agencies may interfere with authority in the affairs of a city are those in which they come in with advice and assistance only. In the fields of health, charities and education, the more advanced states offer to their cities services of great value which are more and more taken advantage of. State universities frequently offer technical advice in a wide range of scientific and quasi-scientific matters besides maintaining bureaus of municipal research through which a rapidly increasing fund of knowledge on purely municipal affairs is made available for the cities. On the whole, the questionable necessity of detailed legislative control is slowly but surely being reduced by the introduction of administrative means of advice and control.

The United States and the cities

From the point of view of constitutional law, it is sufficiently correct to say the United States has nothing to do with the government of cities. The control of local government falls well within the reserved powers of the states and it is beyond the power of Congress to legis-

[1] Philip Zoercher, "The Indiana Scheme of Central Supervision of Local Expenditures," *National Municipal Review*, XIV, 90-95 (February, 1925).

[2] See W. H. Edwards, "Governor Donahey and the Ohio Mayor," *ibid.*, XIII, 350-356 (June, 1924).

late directly for cities. It can only do so indirectly and to a limited extent by the familiar device of the conditional subsidy. Congress has shown in recent years an increasing tendency to appropriate money in aid of education, roads, maternity and child welfare, etc., which become available to the states upon the satisfaction of certain specified conditions, including the duplication of the appropriation. Only one of these measures—the Smith-Hughes Act, in aid of industrial and vocational education—has had any appreciable effect in the field of city government.[1] There is, however, practically no limit to which such "influence" may be carried. The Supreme Court of the United States, in over-ruling the contention of the State of Massachusetts that the Sheppard-Towner Act (sometimes known as the Mothers' Act) was unconstitutional, demonstrated that there is no way in which the constitutionality of these measures may be attacked.[2] This by no means exhausts the contacts which actually take place between the cities and the national government. The Bureau of Standards offers a service which is taken extensive advantage of by cities. The Department of Commerce is actively coöperating with the cities in the matters of housing, zoning, and traffic regulation, applying very effectively the methods of advice and encouragement.

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[1] On the United States subsidy policy see B. A. Arneson, "Federal Aid to the States," *American Political Science Review*, XVI, 443-454 (August, 1922), and Austin F. MacDonald, "The American Subsidy System," *National Municipal Review*, XIV, 692-701 (November, 1925).

[2] Massachusetts *v.* Mellon and Frothingham *v.* Mellon, 262 U. S. 447.

Administration (1923), I, 150-172. For the city and the state in the United States, see particularly the references appended to the succeeding chapter.

For a fairly full discussion of the subject of municipal rights and liabilities, see W. B. Munro, *Municipal Government and Administration*, I, 216-233. Attention, however, should be called to the fact that the liability of French cities is enforced in the ordinary courts, contrary to the implication of the statement on p. 223. A note in *Harvard Law Review*, XXIV, 66-69, summarizes the decisions of the state courts classifying functions. For a more exhaustive treatment, see E. F. White, *A Treatise on the Law of Negligence of Municipal Corporations* (1920); J. F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th edition, 1911); and Eugene McQuillin, *A Treatise on the Law of Municipal Corporations* (1911-1913). Several important cases on the liability of the city for the torts of its officers are reprinted in Reed and Webbink, *Documents*.

CHAPTER IX

DEVELOPMENT OF MUNICIPAL HOME RULE IN THE UNITED STATES

The status of municipal corporations in the colonial period

IN England, prior to 1835, municipal corporations were almost invariably created by charter from the crown. The same practice was followed in the American colonies, the Governor or Proprietor acting in the place of the king. Even in the eighteenth century, however, municipalities on both sides of the Atlantic were largely subject to the legislative branch of the government. There was never any question of the binding force of such general laws as crossed the field of municipal activity. Furthermore, both Parliament and colonial legislatures could and did meddle with local affairs by special act. The powers which the crown could convey by charter were limited—among other things, they did not include any general power of taxation—and frequently required legislative amplification. A long line of special statutes conferring additional powers on municipal corporations and regulating their exercise stretches back to the early volumes of the *Rolls of Parliament*.[1] In both England and America there were also many acts limiting or altering charter privileges, while cities were sometimes, al-

[1] See F. Clifford, *A History of Private Bill Legislation* (London, 1887), II *passim*. As a concrete example of colonial practice, the Virginia Assembly passed six acts relating to the Borough of Norfolk prior to the Revolution. These acts, among other things, established a residence qualification of one year for common councilmen, gave the court of hustings sole power to grant liquor licenses, and authorized tax levies to build a courthouse and prison, market houses, and a powder magazine. These acts, together with the original charter, may be found collected in *The Ordinances of the Borough of Norfolk, to Which are Prefixed the Charter of the Borough and a Collection of Acts and Parts of Acts of Assembly Relating to the Corporation*, published by authority of the Common Council (Norfolk, 1829).

though but rarely, incorporated by statute.[1] It may be said, therefore, that our colonial municipalities were at least potentially subject to almost unlimited legislative control. Actually, however, they enjoyed substantial freedom from vexatious interference.[2] It was an established principle of English law that the crown could not revoke a charter, except with consent of its grantees.[3] It had early become the practice of Parliament to pass laws of local application only on the petition of the locality affected. This precedent was generally followed by the colonial legislatures and it continued to be the custom of the state legislatures, long after the Revolution. As late as 1815 a New York judge declared that it was the "almost invariable course of proceedings for the legislature not to interfere with the internal concerns of a corporation without its consent, signified under its common seal".[4]

Under the early state constitutions

After 1776 the governor permanently lost the power of chartering cities. Two or three of the early state constitutions specifically included the granting of charters of incorporation among the powers of the legislature. The rest accomplished the same result by remaining totally silent on the subject, because all powers of the state not otherwise disposed of by the constitution have been uniformly held to belong to the legislature. Practically speaking, the immediate consequences of this change were negligible. The legislatures continued to act in such matters only on the petition of cities or their in-

[1] Plymouth was incorporated by Act of Parliament as early as 1639 (5 Rot. Parl. 18-21) and Charles City in South Carolina by act of legislature in 1720. J. S. Davis, *Essays in the Earlier History of American Corporations* I, 58.

[2] The legal status of colonial municipal corporations is fully discussed in H. L. McBain, "The Legal Status of the American Colonial City," *Political Science Quarterly*, XL, 177-200 (June, 1925).

[3] Charters might be revoked only by the courts upon quo warranto proceedings and then only for non-user or misconduct. Many were so revoked by subservient English judges in the seventeenth century. None were so revoked in colonial America.

[4] Mayor of New York *v.* Ordrenan, 12 John (N. Y.), 122.

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habitants.[1] From the technically legal standpoint, the power of the legislature was not much broadened. The British Parliament in 1835, without a breath of question as to its power to do so, abolished all existing charters and established a uniform system of government for all English cities. There is not much doubt that, if we had remained part of the British Empire, our legislatures would have enjoyed similarly extensive authority. The power of the governor, however, was effectively restricted. If the early state constitutions had specifically given the governor the charter-making power, his exercise of it would probably have been protected by the courts even as against subsequent modification by the legislature. The legislature would thus have been reduced to a minor rôle in the control of city government. The fact, therefore, that the reaction against executive authority which characterized the first years of "independence" deprived the governor of this bit of his former prerogative, was after all a most significant step in the development of the relation of state to city in America.

When and why legislative interference began

The untrammeled power of the legislature over cities soon came to be abused. No definite date can be set at which good practice ended and bad practice began.[2] By the middle of the nineteenth century, however, the legislatures of many of the states, on their own motion, or at the behest of individuals or political organizations, were freely passing special acts relating to the affairs of particular cities. The change is not, as has been seen, to be ascribed to any alteration in the legal status of cities. It was due rather to a new practice in the exer-

[1] Many of the acts relating to cities during this period contain internal evidence that they were passed upon such petitions.

[2] H. L. McBain, *The Law and Practice of Municipal Home Rule* (New York, 1916), 6. This is the only comprehensive work covering the subject of this chapter. It contains a very complete review of the constitutional provisions, statutes, and court decisions down to the close of 1914. The reader must be cautioned, however, against unquestioningly accepting Professor McBain's critical judgments.

cise of preëxisting powers. Unfortunately for the continuance of traditional moderation in dealing with municipal affairs, the state legislatures had developed no significant distinction between their procedure on special and general acts. Not even a beginning has ever been made in this country toward the establishment of anything like the English system of private bill legislation. The so-called "Jacksonian era" brought with it the destruction of many of the old traditions, good and bad, within which American politics had been confined. It was a period of intense party rivalries and of developing party organization. The vital necessity of strengthening their party's position encouraged the majority in the legislature to abuse their power over local government. It was on the tree of local government that the rich fruit of patronage on which political organizations flourish grew thickest. The party in control of the legislature was not disposed to leave its harvesting altogether to the city authorities, who might belong to the opposition party. When one party controlled the state and another the city, it was easy to satisfy the consciences of legislators that they were supporting the cause of righteousness in stripping the city of power. Special interests in search of favors found it easy to avoid the opposition of local public opinion by taking their demands to the distant legislature, where they often escaped all observation. The members of the legislature all too frequently proved by no means reluctant to profit by such opportunities. Even good citizens, appalled at the corruption and incapacity of city government, were inclined to seek a way out of their difficulties by going over the heads of the controlling local gang to the legislature.

The volume of special legislation

The evil of special legislation for cities continued to develop. The prodigious volume it attained can be sufficiently illustrated by a few figures taken at random from the records of several legislatures. The special laws of

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Massachusetts, relating simply to the city of Boston, passed from 1885 to 1908 numbered 400.[1] It took the New York legislature only ten years—1880 to 1889—to pass 390 acts for New York City.[2] Indeed, the volume of special legislation often much outran that of the public laws passed at the same session. The private laws passed in Illinois in 1869 were published in four volumes of 3,350 pages, and 1,850 of these related to local government.[3] The general statutes for the same year occupy one volume of 290 pages. The Minnesota Legislature, from 1857 to 1881, passed 4,167 special laws covering 8,565 pages as against 2,689 general laws covering 4,265 pages.[4]

Special acts passed by "log-rolling"

It is obvious that if a legislature did its full duty by such a mass of special acts, most of its time must have been frittered away on matters of purely local concern. It is equally certain that, in the absence of constitutional restraints on special legislation, the cities have been the victims of a meddling so constant as to be disastrous even if the legislature had always acted from the best of motives. The worst of the situation has lain in the fact that legislatures rarely, if ever, have given conscientious consideration to the multitude of local measures which crowded their calendars. Bills relating to cities were almost universally introduced by a member from the city affected, and almost every city member was likely to have introduced one or more of them. Each country member, likewise, had his county and township bills. There has never been a place where the policy of "doing unto others as you would they should do unto you" has produced more direct and immediate returns than the state legislature. For one who had local bills to put through, it was a matter of the most elementary discretion to look

[1] *Bulletins for the Constitutional Convention,* Massachusetts, 1918, No. 11, 439.
[2] New York Senate Committee on Cities, 1891, V, 459.
[3] Illinois *Constitutional Convention Bulletins,* 1920, 384.
[4] William Anderson, *City Charter Making in Minnesota,* 13.

with kindness on the efforts of other members to put their local bills through. The votes for local bills usually have been obtained by "log-rolling"—that is, by each member helping every other member roll his log, or pass his bill—with scarcely ever anything more than the most perfunctory consideration by the legislature as a body. In other words, the legislature has habitually shirked its responsibility toward local acts, and frequently inflicted upon cities the ill-considered proposals of a throng of interested individuals and organizations.

Scope of legislative interference

The scope of legislative authority over city government has, in the absence of distinct constitutional restriction, been practically unlimited. The power of the legislature has been held to extend even to the total abolition of a municipal corporation and naturally includes every less drastic regulation. An example of the unlimited character of legislative authority is to be found in certain acts of the Tennessee legislature of 1879, relating to the city of Memphis. Memphis was at the moment bankrupt. To relieve the situation, three laws were enacted,[1] the first repealing the city's charter; the second establishing in place of the City of Memphis a new unit of local government, the Taxing District of Shelby County; and the third providing for the administration of such taxes as were at the time due the abolished city, in the interest of its creditors.[2] The majority of the governing body of the Taxing District were, under this legislation, appointed by the governor and the Quarterly Court. More sinister in their character were the Pennsylvania "Ripper" bills in 1901, which, from purely factional motives, authorized the governor to appoint a recorder to supplant the elected mayors in Pittsburgh and other cities.[3] On numerous occasions, legislatures have taken

[1] Chaps. X, XI, and XCII of the Acts of Tennessee, 1879. See Reed and Webbink, *Documents*.

[2] Constitutionality of this proceeding was sustained in Luehrman *v.* Taxing District, 70 Tenn. 425; O'Connor *v.* City of Memphis, 74 Tenn. 730.

[3] See C. R. Woodruff, "Ripping as a Fine Art," *Independent*, LIV, 100 (1902).

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jurisdiction over important municipal functions out of the hands of the city government and placed them under the control of state officers or boards. It is significant of the motives for their enactment that such laws have most often been adopted at times when the legislature and the city government were controlled by opposing political parties. The first of these violent assaults on local self-government was the creation of the Metropolitan Police District, embracing New York City and neighboring territory, in 1857. The District was to be governed by a board of commissioners, appointed by the governor. It was but a thinly disguised effort to wrest from Tammany Hall police patronage and the advantage of police control at elections. That there followed some improvement in the quality of police administration was small compensation for the diminished sense of local responsibility for local government. So successful, however, was the experiment from the political point of view that, within a few years, the fire department, the public health service, parks, and the administration of liquor licenses were successively subjected to the direction of state appointed boards. Ten or a dozen years saw the repeal of most of these acts, but the way had been shown and other legislatures from time to time have conducted like raids upon the field of local government.

Its extension to trivial details

Not only have the legislatures exerted their power in affairs of such vital concern, but their meddling has descended to matters of the most infinitesimal consequence. They have stooped to grant pensions, name streets, and close alleys. They have created innumerable positions and raised countless salaries. The more they have done of these things, the more they have had to do, for, when the legislature has once acted, that matter is henceforth beyond the jurisdiction of the city government.

The familiar clauses of the national and state constitutions, which have served so often to protect individuals and private corporations against the legislature, have

afforded little, if any, protection to municipal corporations. The Supreme Court of the United States has shown a steady purpose to leave the state legislatures free to deal with cities at their discretion. The clause of the national constitution which prohibits the states from passing laws impairing the obligation of contracts, interpreted in the Dartmouth College case to forbid the repeal of a corporate charter, has been uniformly held not to apply to a public corporation. Similar clauses in the state constitutions have been similarly interpreted. The clauses, found in all our constitutions, which forbid the taking of property without due process of law have, it is true, been successfully invoked to prevent the legislature from bestowing a city's property on private individuals. On the other hand, the courts have refused to interfere where property is taken from a city and given to some other public body. Cities, in the view of the courts, are not entitled to that "equal protection" of the laws which so effectively secures private rights against interference by special legislation.

Lack of protection to cities in the general clauses of the state and national constitutions

A partial and precarious barrier was thrown in the way of this flood of special legislation by the declaration of Judge Cooley in People *ex rel.* Le Roy *v.* Hurlbut,[1] that there is an inherent right of local self-government which the legislature must respect. This opinion was reiterated in several Michigan cases, but has been followed only in Indiana,[2] Kentucky,[3] Iowa,[4] and for a brief period in Nebraska.[5] The cases in which this principle has been applied have almost invariably arisen from an attempt of the legislature to deprive the city of the right to choose some of its own officers. Short of such a deprivation of

The doctrine of inherent right of local self-government

[1] 24 Michigan 44, 1871. See Reed and Webbink, *Documents.*

[2] State ex rel. Jameson *v.* Denny, Mayor of Indianapolis, 118 Ind. 382; City of Evansville *v.* State ex rel. Blend, 118 Ind. 426; State ex rel. Holt *v.* Denny, Mayor of Indianapolis, 118 Ind. 449; State ex rel. Geake *v.* Fox, Comptroller of Fort Wayne, 158 Ind. 126.

[3] City of Lexington *v.* Thomson, 113 Ky. 540.

[4] State *v.* City of Des Moines, 103 Iowa 76; State *v.* Barker, 116 Iowa 96.

[5] Attorney General *v.* Moores, 55 Neb. 480. Reversed in Redell *v.* Moores, 63 Neb. 219.

self-government, all of the opinions leave to the legislature wide authority to prescribe the organization and powers of municipal corporations. Judge Cooley, referring in another case to the decision in Le Roy *v.* Hurlbut, said, "We intended in that case to concede most fully that the state must determine for each of its municipal corporations the powers it should exercise and the capacities it should possess . . .".[1] The theory of the inherent right of self-government, therefore, is interesting chiefly from the eminence of its author and its aptness to the argument of the advocates of municipal home rule. It is based upon another theory of very doubtful validity, that of the "unwritten constitution", *i.e.*, that back of the written instrument is a body of implicit habits, practices, and traditions, which must be applied as if contained in the document itself.[2] Applying this general principle, the decisions find further support in the alleged historical fact that, in certain parts of the country, local government preceded the organization of central authority. There is scarcely a shred of support for this position. The great weight of authority is squarely against "the existence, in the absence of special constitutional provisions, of any inherent right of local self-government which is beyond legislative control".[3] The United States Supreme Court, in the case of Barnes *v.* The District of Columbia,[4] held very emphatically that a municipality is a mere department of the state and that the scope of its powers is completely subject to the legislature.

It is therefore evident that, aside from the force of public opinion, which has proved very variable in its

[1] People *v.* Detroit Common Council, 28 Michigan 240.

[2] Of this notion in general, Judge Cooley was one of the most vigorous opponents.

[3] J. E. Dillon, *Treatise on the Law of Municipal Corporations*, 5th ed., I, 154. A note appended to this section (98) at p. 156 gives a summary of the authorities in the various states. W. R. Clute, *The Law of Modern Municipal Charters*, I, 58-89, quotes extensively from several of the cases. McBain, *op. cit.*, 12-15, briefly reviews the cases.

[4] 91 U. S. 540.

The necessity for constitutional restriction on special legislation

effect, the legislature can be restrained from working its will on cities only by explicit provision of the state constitution. The remainder of this chapter is an attempt to describe and analyze the results of the efforts which have been made to prevent the abuses of special legislation for cities by the adoption of such provisions. Except as they have rendered special legislation impossible, it has continued to develop. The motives which encouraged it are well-nigh as strong today as ever. "Log-rolling" of local acts is as natural to legislatures now as it was fifty years ago. To show that the natural tendencies in this direction have not yet ceased to operate, it may be added that in the twenty years, 1902-1921, no fewer than 7,765 bills relating to New York City were introduced into the New York legislature; 1,552 of these were enacted into law, and 767 other measures, passed by the legislature, were killed by the veto of the mayor.[1] It took the ironclad prohibition of special legislation in the "Home Rule" constitutional amendment of 1924 to stop the flood of special legislation in New York. It is only by such constitutional restraints that American state legislatures have been or can be delivered from the temptation to multiply "log-rolled" acts.

Specific constitutional limitations on legislative power

The earliest limitation on the power of the legislature over municipal corporations is to be found in the Louisiana constitution of 1812, which guaranteed to the citizens of New Orleans the right of electing, in a manner to be prescribed by the legislature, the public officers necessary to the administration of the city.[2] The New York constitution of 1846 applied to all city, town, and village officers a somewhat similar guarantee, which was, as we have seen, soon evaded in the establishment of the Metropolitan Police District. From time to time,

[1] A. W. McMahon, *The Statutory Sources of New York City Government* (1923), p. 19 and Appendix A. These figures are to be taken as approximate only. The figures in the text do not exactly check with those in the appendix.

[2] Constitution of Louisiana, 1812, Art. VI, Sec. 23.

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other states have written into their constitutions prohibitions directed at such particular legislative abuses as state appointment of municipal officers, creation of special state commissions to carry on part of the functions of a city, the opening or closing of streets, and the granting of franchises. Most of these prohibitions, however, as interpreted by the courts, have proved futile to check the course of legislative interference.[1]

General prohibitions of special legislation for cities. —classification

Strangely enough it was the 1851 constitution of Ohio, a state then overwhelmingly rural in character, in which the first general prohibition of special legislation for cities appeared. Two clauses[2] are pertinent: "The general assembly shall pass no special act conferring corporate powers" and "the general assembly shall provide for the organization of cities and incorporated villages, by general laws. . . ." Provisions of similar import are now to be found in approximately two-thirds of the state constitutions. It will not do to say that these prohibitions of special legislation have been altogether useless. For the numerous small and medium-sized cities, they have furnished a very substantial relief against harassing interference in the petty details of their government. On the other hand, the history of these prohibitory clauses has, in general, been a story of evasion in which legislature and courts have connived to prevent their full application. Among the judicial subtleties which have been made use of to establish the generality of that which is not general, one stands out by reason of the frequency of its use and its basis in practical good sense, namely, the doctrine of classification. It has been generally held, and in other connections as well as in this, that an act is still general if it applies to a class of persons or things, provided the classification is reasonable and germane to the purposes of the act. In

[1] McBain, *op. cit.*, 29-63, has covered this phase of the subject very thoroughly.

[2] Art. XIII, Secs. 1 and 6.

dealing with cities, population has been the most common ground of classification, and it has been almost uniformly upheld by the courts. There have been a few instances in which the courts have held obviously arbitrary classifications to be unconstitutional. In 1902 the Supreme Court of Ohio, after enduring for half a century the most barefaced efforts of the legislature to keep each of the larger cities of the state in a class by itself, finally revolted and held the whole idea of classification unconstitutional. On the whole, the legislatures have succeeded, however, in legislating specially for larger cities of their states. Thus, in Pennsylvania there are but one first-class city, Philadelphia, and two second-class cities, Pittsburgh and Scranton.[1]

Municipal codes

In spite of the plain invitation of the constitutional provisions against special legislation, but two of our states have adopted what may fairly be called comprehensive municipal codes. In 1872, as a result of the prohibition of special legislation in her constitution of 1870, Illinois enacted a general charter law for all cities without any attempt at classification. Under this, the cities of the state, from Chicago down, are now governed. Ohio, under the compulsion of the decision of its Supreme Court in 1902, declaring "classification" unconstitutional, hastily adopted a general code for all cities. It is still in force, wholly in some cities and partially in others, but its general application came to an end with the adoption of the "home rule" amendment to the constitution in 1912. The reasons for the failure of other states to adopt uniform codes has been seen to lie in the real need of adapting state control to local needs.[2]

[1] The most extraordinary thing in the way of classification is that of California counties for the purposes of determining their officers and salaries. There are fifty-eight counties and fifty-eight classes of counties.

[2] See discussion of this subject in preceding chapter. In Illinois, as will be seen, a considerable amount of flexibility has been introduced by modified classification for certain purposes and the addition of optional acts by means of which certain cities may adopt, if they wish, the commission forms of government, etc. Special legislation is permitted even for Chicago, subject to local referendum.

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Legislative control can be made flexible only by the use of special acts. A uniform code is feasible only when it deals exclusively with the broad outlines of municipal government, leaving the details to the city authorities. To do this without providing for administrative regulation is to abrogate the state's control of city affairs. From this dilemma the English have escaped by rationalizing the process of special legislation, the continental Europeans by relying on administrative control. Unwilling or unable to adopt either of these courses, we have resorted to one or more of the following expedients:

(1) Special legislation subject to local veto

First, an attempt has been made in a few states to avoid the rigidity of general legislation, and at the same time concede the right of the city to be consulted in its own affairs, by requiring special acts to be submitted to some form of veto by the city concerned. In Illinois, special acts relating to Chicago become valid only after approval by the people of that city. Chicago and Illinois, however, have long been so completely at loggerheads that but a handful of acts have been ratified by the people in more than twenty years. In Michigan a similar provision applies to all cities of the state, although the existence of home rule has done away with most of the necessity for special legislation for cities. The New York constitution of 1894, instituted what was, in a sense, a more workable plan.[1] Cities were divided by the constitution into three classes: first class, those of more than 175,000 population (New York, Rochester, and Buffalo); second class, those between 50,000 and 175,000; and third class, all other cities. It was provided that no law applicable to less than all the cities of a class should go into effect without the approval of the mayor in first-class cities, or the mayor and council in second- and third-class cities, unless repassed by the legislature. The local authorities were given fifteen days in which to act, which in effect gave them a "pocket" veto in the case of meas-

[1] Art. XII, Sec. 2.

ures passed within the last fifteen days of the legislative session. As a means of checking the flood of special legislation, this device was not noticeably successful. Attention has already been called to the number of bills affecting New York City alone between 1902 and 1921. In the years 1912-1921 inclusive, 1,639 special city bills were passed by both houses of the New York legislature. Of these the cities accepted 1,296. The pocket veto disposed of 292. Forty-seven were returned to the legislature and seventeen were repassed over the city's disapproval.[1] It is apparent, therefore, that the city's veto was effective in the great majority of cases in which it was employed. The New York plan may, therefore, fairly claim success as a means of killing off most of the least desired measures. It never, however, gave genuine satisfaction to the people and a Home Rule Amendment, which contained a sweeping prohibition of all special legislation, was adopted in 1923 by an overwhelming popular majority.

(2) Optional charters

The second method of avoiding the evils of special legislation without plunging into the difficulties of a uniform code has been the "optional charter." The celebrated "Des Moines Plan" of commission government was in fact an alternative to certain sections of the Iowa general act for first-class cities, which might be adopted in any such city by popular vote. Several other states made commission government available to their cities by the same means. When the city manager plan became prominent, another group of states set it up as an optional variation of their general laws.[2] The Ohio Home Rule Amendment of 1912 explicitly provided that the legislature might enact optional charters for adop-

[1] G. L. Schramm, "Special Legislation for New York Cities, 1914-1921," *American Political Science Review*, XVI, 103 (February, 1922).

[2] Among the states offering some alternatives to some or all of their cities are Illinois, Indiana, Iowa, Kansas, Massachusetts, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, South Carolina, South Dakota, and Virginia.

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tion by vote of the people. In 1913 an act embodying three such charters of the so-called "federal", "commission", and "manager" types was enacted. A year later, the New York legislature offered six rather fully drafted charters for the adoption of cities of the second and third class. The only notable facts about this enactment were the number of alternatives and the completeness with which they covered the field. Massachusetts put forward, in 1915, a similarly complete scheme with four options. The advantage urged in favor of the optional charter plan is that it allows the city some choice as to the general type of its organization, without in any way relaxing the control of the legislature. Furthermore, says Professor Munro,[1] "The optional charters have been drawn with great care; they are in harmony with the state constitution and laws; they are turned over to the cities with an assurance that there are no incipient law-suits lurking among their provisions." This is perhaps too optimistic a view of their merits. The Ohio optional act of 1914 was notably brief and unsatisfactory. Only two very small cities have made use of it. In New York, special acts supplemental to the optional act have been found necessary in several instances. Unless legislatures do better at this class of legislation than at the rest of their work, there can be no guarantee to the cities of freedom from litigation. On the whole, the public has not accepted the optional charter system as a substitute for home rule.

(3) Home rule

A third, and characteristically American, escape from the dilemma of the special act and the general code is the "home rule charter." It is based on an extension into the relations of the city and the state of the principles which govern the relations of the states to the national government. It means, in other words, the delimitation of a sphere of activity within which the municipality shall be free to govern itself, leaving the supremacy

[1] Munro, *op. cit.*, I, 191.

of the state in all other matters unimpaired. The powers of the municipality within its sphere of competence are exercised in the first instance by a constituent body elected for the purpose of drafting a charter.[1] When ratified by the people, this becomes the organic law of the city and determines the organization and powers of all its instruments of government. It is difficult, of course, to define exactly the sphere of municipal activity. Obviously it must at least roughly correspond with the distinction, already repeatedly referred to in this volume, between those functions of the city which relate to local needs and those which it performs on behalf of the state. No attempt, however, has ever been made to define it otherwise than in general terms.[2] Such phrases as "municipal affairs" (California), "powers of local self-government" (Ohio), and "property, affairs or government of the city" (New York), are obviously vague and require judicial interpretation. Similar phrases, however, of the national constitution are likewise vague, and are still in process of interpretation, in spite of which fact the relations of the states and the national government have been, on the whole, stable and satisfactory. In those states in which the home rule charter system has prevailed for any length of time, the spheres of state and city activity have come to be delineated with reasonable certainty. The courts of the home rule states have been by no means universally liberal in defining the scope of the city's powers, but the most illiberal have left the city a measure of independence considerably in excess of what it enjoyed under any form of legislative charter.

Home rule in Missouri

The first constitutional recognition of the Home Rule Charter idea was in the Missouri constitution of 1875. The preparation of charters by local charter conventions

[1] Exceptional practice in certain states is noted later in this chapter.

[2] Or probably ever will be, in spite of the very vigorous criticisms of Professor McBain.

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was no novelty, having been employed by New York City in 1829 and in numerous other instances. Charters so framed, however, required enactment by the legislature before they could take effect. There were also numerous precedents for the submission of charters to popular vote in the city. The combination of the two ideas, however, was an innovation of great significance. The convention may have been influenced, as to the composition of the charter-framing body, by the fact that in the previous year a mass meeting in Kansas City had appointed a committee of thirteen citizens to draft a charter, which was subsequently enacted by the legislature.[1] The Missouri constitution of 1875 contained two provisions,[2] one relating to the city and county of St. Louis specifically, and the other to cities of over 100,000 generally (St. Louis was at that time the only such city), both of which provided for the election of a board of thirteen freeholders to draft a charter which, on ratification by popular vote,[3] was to become the charter of the city. This charter was required to be "consistent with and subject to the constitution and laws" of the state and to provide for a mayor and "two houses of legislation", one of which had to be elected at large.[4] Two cities, St. Louis and Kansas City, have each adopted two charters under these provisions. The principle of classification, however, as applied in Missouri, has allowed what is in effect special legislation for St. Louis and Kansas City, and, while the power of the legislature has not been exerted to its utmost, the police in both cities are still managed by state commissions and, in such matters as

[1] Isidor Loeb, *Municipal Home Rule in Missouri.* Proceedings of the Fourth Annual Convention of the Illinois Municipal League, December, 1917, p. 48.

[2] Art. IX, Secs. 16 and 17 and Sec. 20.

[3] A simple majority was called for by the St. Louis provision, and a four-sevenths majority by that relating to cities of 100,000.

[4] This last provision was repealed as relating to St. Louis in 1902 and as to cities of 100,000 in 1920.

elections, public utilities, and education, state laws continue to control.[1]

Home rule in California

The California constitutional convention of 1879, at the instance of the San Francisco delegation, copied with slight modifications the Missouri section relating to cities of 100,000.[2] San Francisco, the only city in 1879 with 100,000 inhabitants, did not succeed in adopting a home rule charter until 1899. In the meantime, the privilege had been extended, in 1887, to cities of 10,000 and, in 1892, to cities of 3,500.[3] All the important cities of the state and many of the smaller one have taken advantage of this opportunity to adopt one or more complete charters, while amendments have been very numerous. It may be said, with no fear of successful contradiction, that municipal home rule in California has proved a complete success. The cities of that state have secured a wide field for their exclusive activity, free from state interference, and have used their freedom to the general satisfaction. They have lost the old-time habit of running to the legislature in connection with every little local project. The people feel themselves competent to deal with all city matters at home. The gain in this respect has been immeasurable.[4]

In the meantime, but one other state, Washington in 1889, had adopted the plan. Minnesota followed in 1896, Colorado in 1902, Oregon in 1906, Oklahoma and Michigan in 1908, Ohio, Arizona, Texas and Nebraska in 1912,

[1] Loeb, *op. cit.*, p. 58.

[2] It omitted the requirement of a two-chamber council, increased the number of freeholders to fifteen, and provided for the approval of each charter by the legislature following its acceptance by the people. This latter clause means nothing, the legislature ratifying as a matter of course. But one case of rejection of a charter is on record. This occurred in 1919, in the case of a charter for Fresno, which was fatally defective in form.

[3] T. H. Reed, "Municipal Home Rule in California," *National Municipal Review*, I, 569-576 (October, 1912).

[4] The author feels that he may speak with authority in this matter, as a result of ten years' familiarity with home rule practice in California, both as a student of city government and as a state and city official.

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New York in 1923, and Wisconsin in 1924.[1] These constitutional provisions fall into two classes: (1) those which are self-executing, and (2) those which require an enabling act to carry them out. In every case where an enabling act has been called for, the legislature has liberally performed its task.[2] Some of the provisions have been widely used, notably California, Michigan, Ohio, Texas, Minnesota, Oklahoma, and Oregon. Local satisfaction with their results seems generally to prevail except in Texas and Oklahoma.[3] Where there is complaint, moreover, it is not with municipal home rule, but with the failure adequately to secure it.

Home rule procedure

There are many variations in the details of home rule procedure which make a general description difficult. In general, however, the first step is the election of a "board of freeholders" or "charter commissioners". This election is called by the city council either upon its own motion or on petition of from five to twenty-five percent of the municipal electorate. The charter drafting body consists of from nine to twenty-one members, fifteen being the most common number. When the charter has been drafted, it is submitted to vote of the people, more frequently at a special election, ample provision being made in most states for its publication and circulation among the electorate. A simple majority of those voting on the proposition is all that is required for its adop-

[1] Maryland has a county home rule provision which covers Baltimore, that city being regarded as a county. An amendment, adopted in Pennsylvania in 1922, Art. XV, Sec. 1, provides that "cities or cities of any particular class, *may* be given the right and power to frame and adopt their own charters, etc." This language, however, has proved too weak to impose even a moral obligation on the legislature, and no action has been taken under it. An amendment to the Arkansas constitution was voted on favorably in 1924, which gave a broad grant of power to cities, but did not look toward home-made charters. Its method of adoption was, however, declared unconstitutional.

[2] Except Pennsylvania.

[3] E. R. Cockrell, "Municipal Home Rule with Special Reference to the State of Texas," *Southwestern Political Science Quarterly*, I, 147-154 (September, 1920), and F. F. Blachly, "Municipal Home Rule in Oklahoma," *ibid.*, I, 17-33 (June, 1920).

tion.[1] Upon filing a properly certified copy with the county clerk or Secretary of State,[2] the charter so adopted has, as far as the city is concerned, the force of law. Many of the decisions, indeed, regard home rule charters as law in the same sense as if they had been enacted by the legislature. In four states, some form of state action is essential to the validity of the charter: a concurrent resolution of the legislature in California; approval by the governor before submission in Michigan;[3] approval by the governor after popular ratification in Oklahoma and Arizona. Except for one wholly defective charter, refused approval by the legislature of California with the consent of all concerned, none of these state authorities has ever interfered with the adoption of a home rule charter. The requirement of state action, therefore, may be regarded as a mere form.

Exceptional procedure

The most striking exceptions to the procedure as outlined above are found in Oregon, Minnesota, New York, and Wisconsin. In the first of these states, charter making powers may be exercised by the council, subject to referendum, or may be directly initiated by any sufficient group of voters. In Minnesota, the members of the board of freeholders are appointed by the district court, such action being mandatory if a ten percent petition is filed demanding it. New York, except for cities with commission government, which may use the initiative, leaves the question of creating a charter commission to the council with the approval of the people expressed by the referendum. The council itself, however, has almost unlimited power to amend the charter, subject in a few instances to referendum by petition. In Wisconsin, the

[1] Except in Minnesota, where four-sevenths of those voting at the election is called for.

[2] It is unfortunate for the student that the latter practice does not prevail everywhere. In Michigan, for example, it is impossible to find out, except by an investigation in each county, just what cities have adopted home rule charters. To obtain copies of these charters is still more difficult.

[3] With the proviso that the charter commission may override the governor's veto by a two-thirds vote and submit the charter anyway.

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council may proceed to make a charter, subject to popular approval. A charter also may be directly initiated by petition, or a charter convention can be employed. The preliminary question of holding a charter convention according to one or more plans may be submitted to the people by the council or by initiative petition.

The amendment of home rule charters

In all the states except Colorado and Minnesota, amendments to a home rule charter may be proposed by the city council. In all except New York, they may be proposed by initiative petition. Several states, including Michigan, Oregon, New York, and Wisconsin, permit charters originally granted by the legislature to be amended in the same manner. In other words, the exercise of home rule powers in these states may be begun without first adopting a wholly new charter. The ratification of amendments is governed in general by the same rules as those which apply to complete charters.

Home rule by legislative act

In a few states a measure of home rule has been conferred by legislative act.[1] Of course, such an act is no bar to subsequent legislative interference, and falls far short of guaranteeing municipal independence. The earliest provision of this sort is to be found in the Iowa act of 1858, which allowed cities or towns then governed under special acts to amend their charters on the initiative of the city council or one-fourth of the voters, subject to popular referendum.[2] This act and the somewhat similar ones adopted in Louisiana in 1896 and South Carolina in 1899 have proved of small practical importance. Mississippi, however, in 1900, provided[3] that charters might be amended by the legislative authority of the city, subject to the approval of the governor and attorney general as to consistency with the laws and constitution of the state and United States. If a protest is filed by one-tenth of the voters, the measure must be sub-

[1] For a summary of these acts, see Illinois Constitutional Convention Bulletins 406 (No. 6).

[2] Laws of Iowa, 1858, Chap. 157.

[3] Laws of Mississippi, 1900, Chap. 69.

mitted to popular vote. This act has been made use of on several occasions and has been sustained by the courts. Florida [1] in 1915 authorized charter boards elected in the several cities to alter, subject to referendum, their charters so far as the organization of the city government and duties of officers are concerned. The charter board has, however, no jurisdiction to change the corporate powers of the city. Under this act, numerous cities have adopted the commission or manager form of government. Connecticut,[2] in the same year, empowered cities and towns to amend their charters through the medium of a charter board and local referendum. The only use of this act has been by the town of West Hartford, to set up the manager form of government. So insecure did the town feel in the validity of its home-made charter that it promptly applied to the legislature for the passage of a special act validating it.[3] A commission on Uniformity of Municipal Charters, appointed under the authority of an act of the 1921 legislature, recommended in 1923 the repeal of the home rule act and the strengthening of other legislation, permitting towns and cities to deal by ordinance with many matters ordinarily controlled by the legislature.[4]

Merits of the home rule charter system

Aside from the popular satisfaction it has given, which is a consideration by no means to be neglected in the establishment of governmental devices, there is a good deal to be said for the home rule charter system. It offers a maximum of flexibility in fitting the charter to local needs. The charter is framed by a responsible local authority, subject to approval by the people among whom it is to operate. This is in marked contrast to the absence of effective responsibility for local measures to which the log-rolling practices of the legislature have

[1] Florida Acts and Resolutions, 1915, Chap. 6940.
[2] Connecticut Public Acts, 1915, Chap. 317, Chap. 24 of General Statutes.
[3] Special Laws of 1921, Chap. 22.
[4] *Report of Commission on Uniformity of Municipal Charters* (1923), which contains the text of both acts.

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given rise. The home rule system, furthermore, tends to strengthen the confidence of the locality in its self-governing ability. Capacity for self-government can be acquired only by the practice of self-government, and capacity for local self-government is the only safe basis for the great democratic state. The home rule system is productive of occasional vagaries in charter drafting, but, on the whole, boards of freeholders do their work better than the irresponsible individuals or groups who prepare charters for introduction in the legislature. It is increasingly their custom to employ competent legal and other expert assistance in the prosecution of their task. Last, but not least, it relieves the legislature of the burden and corrupting influence of local legislation.

Sphere for municipal activity

The only serious objections to the home rule charter plan have been very cogently stated by Professor Munro.[1] Summed up, they come to this: that a large and increasing number of the functions of city government are matters of state concern—"police, health, education, poor relief, corrections, sanitation, elections, taxation, indebtedness, and the control of public utilities."[2] So numerous, the contention is, are these activities, that the field which can be safely left to the municipality is too narrow to be significant. Granting, for the sake of argument, that the functions listed belong totally to the state, and are to be performed solely under the state's regulation, there would be left to the city, city planning, street construction and maintenance, street cleaning, street lighting, fire protection, recreation, water supply, and the ownership and operation of other utilities. These latter activities afford considerable scope for municipal initiative and enterprise. In fact, however, the state does not, and in the nature of things cannot, occupy completely the area of governmental activity represented by Professor Munro's list. Police administration, for

[1] Munro, *op. cit.*, 188-190.
[2] *Ibid.*, 90.

example, which is the function of local government where the percentage of state interest is highest, presents many aspects which are predominantly local. The police force carries out, besides the laws of the state, a great number of municipal regulations. Among these matters of primarily local concern, which have been developed by local initiative, is the regulation of traffic. In relation to health, sanitation, education and poor relief, the state is interested in the maintenance of certain standards which cities frequently surpass. State laws prescribe in detail the method of reporting and quarantining contagious diseases, but, in the field of child welfare, the city health departments have mostly made their own way. Vast sewer systems and costly plants for the disposal of sewage have been developed altogether by municipal enterprise, and it is only when the purity of public waters is affected by the effluent that the authority of the state is exerted. No sane person would advocate the removal of all state supervision over municipalities or deny the right of the state to exercise its authority in all matters of general concern. Outside this limitation, however, there is an ample field for the self-governing activity of cities. In most of the home rule states the cities are successfully and happily operating in that field without serious conflict with the rights of the state. More important still, home rule provisions, even imperfect ones, have done more than anything else to break down the habit of reliance on the legislature in city affairs. In New York, for example, it was the custom for half a century or more to rush to Albany for the settlement of all sorts of questions even when there was adequate power to deal with them in the city. This enervating practice has given way in the home rule states to a very desirable spirit of self-reliance.

Many of the best informed students of municipal affairs advocate a wider exercise of administrative control, initiative lodged in the locality, a power of negation in

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The extension of administrative control in relation to home rule

the state,—the European method,—as an alternative to municipal home rule. They often use as an illustration the application of this method to the subject of municipal tax rates and indebtedness. At present our state laws or constitutions, even in home rule states, often limit the tax rate and indebtedness of a city to certain fixed proportions of the assessed valuation. Sometimes these limitations are extremely vexatious; for example, the Smith one per cent law in Ohio, which, in the opinion of some observers, amounts to a practical nullification of the privilege of home rule.[1] Under a system of administrative regulation, each proposed increase in taxation or indebtedness could be considered, as is done in Indiana, on its merits by a presumably competent state officer or board. Here is flexibility in state control based on a rational consideration of the facts involved. In other realms of municipal activity, such as police, health, and education, some good results have been obtained and there is room for a wide extension of these methods. It has been pointed out that very slowly, but apparently surely, the principle of administrative control is making headway in the United States. This, in time, may obviate at the same time the necessity of special legislation and home rule. But that time is a long way off and, in the meanwhile, municipal home rule seems the most satisfactory method of adjusting the relations of state and city. In fact, it is not unreasonable to hope that the practice of home rule will actually lead to the development of state administrative machinery to regulate the otherwise unlimited initiative of the city.

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[1] Luther H. Gulick, in *The Government of Cincinnati and Hamilton County* (1924), 123.

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CHAPTER X

MAYOR AND COUNCIL GOVERNMENT TODAY—THE COUNCIL

Present types of city government

THE structural changes which have taken place in American city government during the past forty years have, as we have seen, been concerned, first, with the size, composition, and basis of election of the city council and, second, with the constitution of the executive and its relation to the legislative authority of the city. The changes of the second category, if not more significant, have attracted more attention and presented diversities which have become the foundations for contending schools of thought on city government. These changes have cast present-day city government into two main types. In the first, which we may call the "MAYOR AND COUNCIL TYPE," power is shared, after the traditional American fashion, by a mayor and council, both deriving their existence directly from the people. There are scarcely any two cities in which the relative positions of the mayor and council are exactly alike. The legal authority of the mayor varies from near-dictatorship to a position of distinct subordination to the council. It is possible, however, to recognize within the group two subtypes which are most often spoken of as the "*strong-mayor*" and "*weak-mayor*" plans of government. In the second, or "councilmanic", type, all municipal authority is vested in the council, a return in a sense to eighteenth century practice, which exerts its authority directly—the "*commission*" plan—or through an executive selected by and responsible to itself—the "*manager*" plan. This analysis of forms of city government may be expressed diagrammatically as follows:

A. Mayor and Council Type
   1. Weak-Mayor Plan
   2. Strong-Mayor Plan

B. Councilmanic Type
   1. Commission Plan
   2. Manager Plan

The majority of our cities still belong to the mayor and council type. Of the 1467 cities of over 5,000 inhabitants [1] approximately 300 are governed under the commission and 200 under the manager plans, leaving over 900 of the mayor and council type. Among the larger cities, the proportion of mayor and council governments is slightly greater, there being but three manager and three commission governed cities out of the 20 cities of more than 300,000 population.[2] Within the mayor and council group the weak-mayor plan has it over the strong-mayor plan by an overwhelming majority. Of the fourteen cities of over 300,000 with a mayor and council type of government, the legal position of the mayor can properly be called strong in only five: New York, Boston, Detroit, St. Louis and Indianapolis. As one goes down the population scale, the proportion of strong-mayor plans soon dwindles out to nothing. In fact, it has been only among cities of the largest size that the strong-mayor plan has competed successfully with the commission and manager plans as a measure of reform. Even there it is now apparently losing ground with the recent passing of Cleveland and Cincinnati from the strong-mayor to the manager column. It must not be forgotten, in the emphasis which is laid on the changes wrought in the structure of municipal government by the era of reform, that much more than half of the cities of the United States still cling to the traditional form of government in which the theory of checks and balances has sway. The weak-mayor plan, taking into account numbers alone, is the

[1] Census of 1920.
[2] Excluding Washington, D. C.

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prevailing form of city government in the United States. The tendency, however, is away from it. The victories of the newer plans have all been won at its expense. The number of its adherents has been steadily diminishing for a quarter of a century.

Disappearance of two-chamber council

Turning to the constitution of the council, the first fact which strikes the attention is that the bicameral system has practically passed out of existence. We have seen that it never had much of a foothold west of the Alleghenies or in small cities anywhere. It was not until after the beginning of the twentieth century, however, that it definitely began to lose ground in the large cities of the East. In the early years of the movement, the municipal reformers had been divided in their attitude toward it.[1] Buffalo first adopted two chambers in 1891. The Minneapolis Municipal League, as late as 1897, recommended, and the Tri-City Convention (Minneapolis, St. Paul, and Duluth) adopted, the idea of the two chamber scheme in a charter plan which came to nothing. New York, however, went back to the bicameral system for four years in 1897. The Virginia constitution of 1902 required it for all cities of over 10,000 inhabitants.[2] In 1905 there were as many two-chamber councils, among the larger cities at least, as in 1865. In 1905, in the twenty-five largest cities,[3] there were ten two-chamber councils. Among the twenty-five largest cities of today there is but one, the city of New York, the legislative body of which consists, under the home rule act of 1924,[4] of the Board of Aldermen and the Board of Estimate and Apportionment as separate branches. The bicameral system persists in two cities which in 1905 ranked among the first twenty-five, *i.e.*, Louisville and Providence. Atlanta and a few ultra-conservative New England cities

[1] See Papers of S. B. Capen and John A. Butler in *Proceedings of the Baltimore Conference for Good City Government* (1896), 247-262.
[2] Art. VIII, Sec. 121.
[3] Omitting Washington.
[4] Secs. 10-14.

are at present other important adherents. Its chief support, which kept it going in several cities long after its undesirability was commonly recognized, has been tradition. In general, it lingered longest, not among its later converts, but among those which had had two chambers from so early a date that city government without them was almost unthinkable. Philadelphia and Baltimore, for example, which adopted the bicameral system in 1796, clung to it until 1920 and 1923 respectively. Were it not for the provisions of the New York Home Rule Act of 1924, one would be inclined to say that it was a similar mental lethargy which perpetuates it anywhere today. New York's return to the two-chamber idea seems to indicate that we are not done with fidgetting between forms of city government.

A smaller council

Coincident with the disappearance of the two-chamber council has been a shrinkage, both positive and relative to population, in the size of councils. This is true even if we leave out of account those cities which have gone to the "commission" or "manager" plans of government. The fourteen largest cities which now have a government of the "mayor and council" type had, in 1905, an aggregate of 751 representatives in their councils. In 1926 they had but 333. This reduction is only partially to be accounted for by the abolition of second chambers. It has taken place in the face of a great increase of population. In these fourteen cities there was one representative to every 13,574 inhabitants in 1905, and one to every 49,263 in 1925. The largest council in the United States is the Representative Council of Newport, Rhode Island, which numbers 195. This body, however, has purely legislative functions and was created to stand in the place of the old-fashioned town meeting. It is supplemented by a Board of Aldermen, which corresponds to the Board of Selectmen of the town system. No other council even approximates it in size. The New York Board of Aldermen is the next largest with 73 mem-

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bers, Chicago has a council of 50, Providence 40 and no other city of over 200,000 inhabitants more than thirty.[1] Among the large cities having very small councils are Detroit, Pittsburgh, Seattle, Indianapolis and Denver, with nine members each, and Columbus, Ohio, with seven. The average number of members for the twenty-two cities of over 200,000 with "mayor and council" government is 22. The smallest number of councilmen found in incorporated cities is three, a number which is confined to very small places. In the cities of from 5,000 to 20,000 which have the "mayor and council" form of government, the size of the council varies from five to thirty with a distinct tendency toward the lower figure.

Comparison with European councils

Councils in the United States are small as compared with those of many foreign cities. Compare New York's Board of Aldermen of 73 members with the London County Council of 144 members; Chicago's Council of 50 with the "Representative Assembly" of Berlin of 225 members; or the Philadelphia Council of 21 with the Paris Council of 80 members. French councils, however, outside of Paris are about the same size as those found in American cities of the "mayor and council" type, 36 members being the maximum (except in Lyons, with 54) and 10 the minimum. English and Prussian councils are much larger than American. In Prussian cities of 90,000 to 120,000 the council consists of 60 members. In the larger cities six councilors are added for each 50,000 of additional population. Among the larger English cities, Liverpool and Manchester have councils of 144 each, Birmingham's council runs to 118 and Leeds' to 87.[2]

Election at large or by wards

Throughout the nineteenth century election by wards was the almost universal rule in all but the smallest cities of the country. It is still the prevalent practice for the very large cities which have retained the mayor and coun-

[1] Louisville has a lower house of 24 and upper house of 12.

[2] In the cities which have adopted the commission or manager plans the council is invariably small. Cleveland has the largest council, 25 members, of any such city, the commonest numbers being five, seven, or nine.

Composition of Councils in Cities Having a Population of Over 300,000 by the 1920 Census[1]

City	Population	Number of Councilmen	Population per Councilman	Election Geographical Basis	Partisan or Non-partisan	Term	Salary
New York	5,620,048	Board of Estimate & Apportionment 8		At large 3 By boroughs 5			None Mayor and Comptroller, $25,000 President, Board of Aldermen, $15,000
		Board of Aldermen 71	79,155	By districts 65 By boroughs 5 At large 1	Partisan	2	Presidents, 5 Boroughs, $15,000 Aldermen, $5,000
Chicago	2,701,705	50	54,034	By wards	Non-partisan	2	$3,000
Philadelphia	1,823,779	20	91,189	By districts	Partisan	4	5,000
Detroit	993,678	9	110,409	At large	Non-partisan	2	5,000
Cleveland	796,841	City Manager Govt. 25	31,874	Prop. Repr. 4 districts	Non-partisan	2	1,800
St. Louis	772,897	29	26,652	At large 1 Nominated by wards and elected at large 28	Partisan	4	1,800
Boston	748,060	22	34,003	By wards	Non-partisan	3	President, $3,000 $1,500
Baltimore	733,826	19	38,622	At large 1 By districts 18	Partisan	4	1,500
Pittsburgh	588,343	9	65,372	At large	Non-partisan	4	6,500
Los Angeles	576,673	15	38,445	By wards	Non-partisan	2	2,400
Buffalo	506,775	Commission Govt. 5 Including Mayor	101,355	At large	Non-partisan	4	7,000 Mayor, $8,000
San Francisco	506,676	18	28,149	At large	Non-partisan	4	$2,400
Milwaukee	457,147	25	18,286	By wards	Non-partisan	4	1,860
Newark	414,524	Commission Govt. 5 Including Mayor	82,905	At large	Non-partisan	4	7,500 Mayor, $8,250
Cincinnati	401,247	City Manager Govt. 9	44,583	At large	Non-Partisan	4	$1,150
New Orleans	387,219	Commission Govt. 5 Including Mayor	77,444	At large	Partisan	4	6,000 Mayor, $10,000
Minneapolis	380,582	26	14,638	By wards 2 per ward	Non-partisan	4	$1,800
Kansas City	324,410	City Manager Govt. 9	36,045	At large 4 By districts 4 And mayor	Non-partisan	4	$5 per meeting, not to exceed $300 a year
Seattle	315,312	9	35,035	At large	Non-partisan	3	$3,000
Indianapolis	314,194	9	34,910	At large Nominated by dist.	Partisan	4	600

[1] Excluding Washington, D. C. Prepared by the Bureau of Government, University of Michigan.

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cil type of organization. Only seven of the twenty-two [1] with over 200,000 population elect their councils at large. The number up to the end of 1924 was nine, but at the November elections of that year Boston and Los Angeles went back to the ward plan. In the smaller cities election at large is more common, and increasingly so as one descends the population scale.[2] A few cities, of which St. Louis is a notable example, have combined at large and ward election by allowing the electorate as a whole to choose one councilman from each district. In still other cities, part of the council is elected at large and part by districts. Little light is thrown on our problem by foreign practice. Ward election is the rule in the larger English boroughs, each ward usually electing three councilmen. The smaller boroughs, however, choose their councilmen at large. The French Municipal Code permits the division into wards of Communes of more than 10,000 inhabitants, but not less than four councilmen can be chosen from each ward. The number of wards therefore cannot exceed nine, except in Paris and Lyons. In the capital, one councilman is chosen from each of the four "quartiers" into which the twenty arrondissements are divided. Elsewhere on the Continent, some system of "proportional representation" generally prevails and council members are commonly elected either at large or from very large districts.

Considerations governing the size and basis of election of councils

The considerations which govern the size and basis of election of a council are of two sorts. The first relate to the effective transaction of business within the council, the second to the adequate representation of the public outside. For the purpose of swift and responsible transaction of business there can be no doubt of the superiority of the small council. A large council displays most of the traits characteristic of a state legisla-

[1] Includes Rochester, N. Y., where a city manager system becomes effective January 1, 1928.

[2] With very few exceptions, councils in the cities under commission or manager government are chosen at large.

ture. It develops a formal procedure—it must do so if it is to transact business at all. It is almost equally necessary for it to divide its work among committees, which means a loss in the responsibility of the council as a whole. It invites speech-making and other forms of playing to the galleries. A small council makes possible informal procedure and genuine deliberation. It is not a debating society, but a business directorate. As will appear more fully in the succeeding chapters, small size is, at least under American conditions, essential to the sound performance of the task set for the council in the commission and manager plans. For the performance of purely legislative functions, no such vigorous necessity exists for a small council, although it continues to be desirable from the point of view of efficiency. There is a downward limit, of course, below which a council ceases to be a deliberative body at all. Experience seems to have fixed upon five as the smallest number which can safely be employed.

When we turn, however, to consider the council as a representative body, the case for the small council is not so clear. On the whole, the smaller councils of today have proved more satisfactory than their larger predecessors, not only more business-like but more responsive to public opinion. This does not prove, however, that it is not possible to go too far in reducing the number of councilmen. A small council must be elected at large or from relatively large districts. This usually results in raising the caliber of successful candidates. It is as nearly axiomatic as any political principle can be, that the larger the district the larger the candidate must be to attract votes. Much of the weakness of the nineteenth century councils was the low moral and mental stature which could command election from the small wards of the period. There is a point, however, at which a unit of election ceases to be "wieldy", sometimes from mere size and sometimes from the inclusion of conflict-

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ing elements of population. The councilman elected from such a unit is frequently unsatisfactory as a representative. If the unit is too large he ceases to be "close" to his constituents. If it is not homogeneous he represents one faction and ignores the other. In most cities even up to a population of 150,000 to 200,000, election at large has generally approved itself in practice. Several larger cities have given it an extensive trial,—Boston, Detroit, Pittsburgh, Los Angeles, Buffalo, San Francisco, Newark, and Seattle. Even in cities of this size the results have, on the whole, been an improvement over those of the large, ward-elected councils. Boston and Los Angeles, however, have recently (1924), by popular vote, substituted for councils of nine elected at large councils of twenty-two and fifteen, respectively, elected by districts. How significant this reversal of policy may prove, time alone can show. In each case, however, the motive was clearly the people's feeling of remoteness from the councilman elected at large. The usefulness of the New York Board of Aldermen has sometimes been questioned, but that body finds an ample justification for existence in forming a connecting link between the citizen and his government. The Alderman is near enough to his constituents so that, when they have business with the city government, they can come to him without embarrassment. He is the "liaison officer" between the people of his district and the distant mayor and department heads. Just how many councilmen there should be, and from what units they should be elected, is a question to be determined, not *a priori*, but for each city by the application of the principle of the "wieldy" district to the facts of the case.[1]

Internal organization of council

Among the larger cities which adhere to the mayor and council type of government, the city council usually is left free to choose its president from among its own

[1] For a further discussion of the value of at-large election and the use of proportional representation as a means of solving the problem of the ideal constituency, see Chap. XV.

number. The mayor presides in the New York Board of Estimate and Apportionment and in the Chicago and San Francisco councils. Sometimes an officer, like the President of the Board of Aldermen in New York, is chosen by the people to preside over the council.[1] These are, however, the exceptions. In small cities, on the other hand, it is not uncommon to find the mayor presiding over the deliberations of the municipal legislature. Where the mayor does not preside, the president of the council, as a rule, succeeds to his functions in the event of death or disability. It is the almost invariable practice of councils to choose a president *pro-tem,* in anticipation of the absence or incapacity of the regular president. In most instances, the council chooses its own clerk, who is also, with rare exceptions, City Clerk. There are, of course, in the larger cities numerous deputies and assistants in the office of this official. The council may also have a Sergeant-at-Arms, although the functions of such an officer in preserving order in the council chamber, summoning witnesses, etc., are usually performed by a member of the police department assigned to that duty.[2]

The committee system

For the convenient consideration of matters which come before it, the council is today, as formerly, divided into committees. They may be appointed by the "chair", but where the mayor presides they are usually chosen by the council itself. The ordinary practice is to have one committee for each of the more frequent subjects of council action. In some of the larger councils the committees are very numerous. Providence,[3] for example, has twenty-one standing and twenty-five special committees. Cincinnati, before adopting the manager plan, had thirty-two—as many committees, in fact, as members

[1] Cincinnati, prior to the charter amendments of 1924, elected a vice-mayor who presided over the council.

[2] In a large council there may be other minor officers, such as messengers, pages, etc.

[3] See Pocket Manual of Providence City Government, 1925-6.

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of the council. Chicago has twenty council committees. When the number of committees is large, a half dozen or so usually do most of the work.[1] New York, however, with a larger council than any of the cities mentioned, has had in recent years only twelve committees in the Board of Aldermen. Philadelphia has twelve.[2] In the smaller councils the number of committees is rarely more than ten. Boston, before the return to the ward plan, had fourteen, four of which, however, were committees of the whole council. Detroit, on the other hand, has but one standing committee, that on Ways and Means, which consists of the whole council. Pittsburgh has nine committees, each composed of the whole council and each with a different chairman. Obviously in Detroit and Pittsburgh, with their councils of nine, there is in reality no committee system at all analogous to that of the state and national legislatures. The size of committees also usually bears some relation to the size of the council and the number of committees. In a council of seven, the largest committee is likely to have no more than three members. Otherwise the advantages of the division of labor which the committee system implies would be lost.

Relations of committees to the council

The relation of committees to the large councils approximates that of committees to the state legislature. The smaller the council, the weaker is the disposition to take the word of the committee as final. In general, the council committees of today interfere much less than formerly—in many cities not at all—with the administrative departments. They are no longer to be regarded

[1] Prior to January 1, 1926, Cincinnati had thirty-two committees, of which four only—those on sewerage, streets, street traffic, and ways and means—were constantly active. *Government of Cincinnati and Hamilton County* (1924), 190.

[2] Finance (13 members), Public Works (11), City Property and Service (9), Lighting (7), City Planning and Zoning (7), Law and Municipal and County Government (9), Public Safety (9), Public Health (9), Public Welfare (9), Commerce and Navigation (9), Transportation and Public Utilities (9), Celebrations (8). The council consists of twenty members. It is obvious that each member must serve on five or six committees. See Bureau of Municipal Research of Philadelphia, *Philadelphia's Government* (1924).

as chiefly a device for extending the control of the council beyond the strictly legislative sphere; rather they are primarily a means of expediting the transaction of properly legislative business. The evil of committee system as it exists today lies in loss of responsibility to the people and opportunities for log-rolling. Committees often meet in secret, and even when this is not the case, there is ordinarily very little publicity attendant on their sessions. This too often makes possible secret "deals" for which no one can afterwards be held responsible.

Ordinances and resolutions

Typical council action takes one of two forms: the ordinance or the resolution. There is a good deal of variation as to just what may be done by the one or the other method, but in general an "ordinance" is necessary to make permanent regulations of general application—what may be called local laws—while a "resolution" is employed to express the will of the council in matters which may be classed as administrative. For example, if the council desires to provide that all buildings in a certain zone of the city shall be set back twenty feet from the street line, it must proceed by ordinance. If it desires to order that a certain street be paved, it passes a resolution expressing this intention. Both ordinances and resolutions must be presented in writing. Usually, however, the subsequent procedure with regard to ordinances is much more formal. They often must have two or three readings at successive meetings. Publication, most frequently in some newspaper, is an almost invariable condition of their validity, while only certain resolutions must be published. A majority of all the members of the council is usually required to pass either an ordinance or resolution. In earlier days there was much criticism of the form of city ordinances. This has largely passed away. It is, under most city charters, the duty of the city attorney to draft ordinances at the request of the council, its individual members, or other city officials, and this service is largely used, often much more

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so than the similar service offered by legislative bill drafting bureaus in connection with state legislatures. It has been previously pointed out that the acts of city councils are subject to a more vigorous review by the courts than are the acts of the state legislature.[1] This situation has forced councils to a more careful attention to legal details, or—what comes to the same thing—a more complete reliance on the law officer of the city for advice in all matters of form or procedure. It is customary to have the city attorney present at all meetings of the council to keep its feet strictly in the paths of law. Provision is frequently made for the periodical codification of ordinances. These codes of ordinances for the larger cities compare favorably as to both form and substance with similar compilations of state laws.

Council procedure

The major questions of procedure, such as the number of readings required to pass an ordinance, are usually dealt with in the city charter. Councils have, however, considerable latitude in arranging their order of business and regulating debate. That one council acts very much like another is due to the dominant place occupied in our political—and, for that matter, social and business—life by the generally accepted canons of parliamentary law. The procedure of city councils differs from that of other legislative bodies chiefly in the degree to which they admit participation by persons not members of the council. Council meetings are, of course, open to the public; in most cities the charter requires them to be so. In the councils of moderate size which are generally characteristic of the mayor and council type of government, it is usual for the city attorney, city engineer, and other officials to be present to offer advice, answer questions or speak in the interests of their departments. Private citizens, also, who desire to express their views on matters before the council are usually permitted to do so. With councilmen putting questions and offering

[1] See Chap. IV.

explanations of their position, these "hearings" often present the appearance of an informal open meeting of the council and the portion of the public interested, in which both sides join in a general debate. All this is in strong contrast to the practice of the state and national legislatures in hearing interested parties through committees. The committee is supposed to transmit to the body of which it is a part the impression it receives from those whom it hears. In fact, however, the committees serve, in a sense, as shock absorbers between the public and the legislature. At any rate, the legislature receives the views of those who appear before its committees, modified and interpreted in the form of committee reports.

The influence of committee hearings on the legislature is not so great as that of council hearings on the council. The difference is that between indirect and direct action. It is the practice of American city councils to meet at regular and frequent intervals—usually at least once a week—and scarcely a session goes by in which citizen opinion is not heard. The council is, therefore, always at touch and go with the public. There are advantages and disadvantages about this situation. It is very convenient to have an easy and informal approach to the council. That body is exposed, however, to sudden assaults by determined bodies of hopeful or indignant citizens, who may or may not represent the real opinion of the community. On the whole, nevertheless, it must be admitted that in the large cities with large councils, where the freedom of public participation is necessarily at a minimum, the operation of councils is much less satisfactory than in those cities where direct contact between representatives and people is preserved. In the large cities public opinion reaches the council almost exclusively through the medium of the press, while news of the council's acts gets to the public by the same means. Under such circumstances, the press can make or mar

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the fortunes of every political aspirant. The deference paid to it about the city hall, therefore, is likely to be as extreme as it is in Washington and the capitals of the states. To say that government by "newspaper" tends in the great cities to take the place of government by mayor and council is perhaps an exaggeration, but the statement contains more than a modicum of truth.

Functions of the council

Even in the cities most thoroughly committed to the strong-mayor plan, the council retains important functions. It is a general principle of municipal corporation law that all powers of the city not specifically assigned to other agencies belong to the council. It is surprising to note how many acts of the city require an ordinance or resolution of the council. Council members in large cities are busy with council meetings, committee meetings, etc., several hours a day, five or six days in the week. Their duties may be classified as follows:

(1) *The adoption of local laws or ordinances.* Some of these relate to the internal organization of the city government as, for instance, ordinances creating offices, fixing salaries, organizing departments. Others are "police regulations" affecting the general public. The latter most often cover ground also covered by state laws and the power of adopting them adds little importance to the body to which it is entrusted. They are, however, numerous as the leaves on a tree and often enter into a degree of detail as vexatious to the legislator as to the citizen. Occasionally the council is called upon to use its police power in a matter of great importance such as dividing the city into districts in which the use, height and area of buildings are regulated—a process known as "zoning".

The granting of privileges, or franchises, in the streets to public utility enterprises, usually classed as an exercise of legislative power, belongs in this enumeration. With the growth of state regulation and the decline in

public utility profits, this power has lost its spectacular features, yet it remains important.

(2) *The control of expenditure.* This includes the raising of revenue, the borrowing of money, and the determination of the objects and amount of expenditures. In this field the council's discretion is a good deal limited. The objects of taxation and methods of taxation are generally fixed in the constitution or laws of the state. State law or city charter likewise set upward limits to the rate of taxation the city may lay and the amount of indebtedness it may incur. Even in making appropriations its power is seriously restricted in law and in practice by the growing power of the mayor to initiate the budget.[1] In many cities, however, the council is still supreme in determining expenditures and in all cities it must act upon every proposal affecting taxing, borrowing or the spending of money. In some cities the council or one of its committee still attempts further to control expenditure by auditing claims against the city. This practice, however, is rapidly disappearing.

(3) *The performance of administrative acts.* There is a wide range of acts, essentially administrative in their character, which law or custom has decreed to be part of the work of the city legislature. Among them are the making of contracts (above a certain sum), fixing street grades, levying special assessments for public improvements, and approving official bonds. It is this class of work—much of it purely a matter of form—which takes most of the time of the council. If the city is actively carrying on public improvements, the letting of contracts and especially the levying of special assessments, which usually requires several procedural steps, may take five-sixths of the time of the council. When the council shares in the appointing power, grants licenses, and attempts to exercise some control over the

[1] See Chap. XI.

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administrative departments, the administrative side of its duties assumes still more importance and takes still more time.

Relation of council work to the quality of councilmen

The kind of work demanded of a councilman has a very direct relation to the kind of citizen who can be induced to run for the office. The fact that many hours a day for several days a week must be spent on matters of simple routine makes the councilman's a dull job. It is usual, in the larger cities, to pay salaries to councilmen. The highest salary, under the mayor and council plan, is that paid in Pittsburgh, $6,500; Detroit and Philadelphia each pay $5,000; New York aldermen receive $3,000, while Boston and Baltimore councilmen receive $1,500. In the smaller cities the salaries seldom exceed $1,800 and dwindle from that figure to nothing. It is nowhere attempted, however, to pay salaries sufficient to tempt successful men in business or the professions to give much of their time to such unrewarding toil. Even when the mayoralty is not organized on the strongest lines, the council affects the great problems of administration only indirectly. It gives its members no opportunity to exercise executive power themselves, or even to determine the constitution of the executive. In the smaller councils, like that of Detroit, the individual counts for more, but it is seldom that the city can buy with even a $5,000 salary anything more than tolerable mediocrity. Among the smaller cities, where the time sacrifice is not so great, it is easier to attract men of relatively high standing, but even there the average character of councilmen is, to say the least, disappointing. In Great Britain and the Continent of Europe, councilmen serve without pay. In general they give a good deal of time to their duties—a situation which eliminates to some extent active business and professional men. These councils are, however, the real governing bodies in their respective cities, and men of standing willingly seek places on them. Salaries, therefore, are not the

determining factor as to the character of council membership, but rather the nature of the councilman's job itself. CHAP. X

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CHAPTER XI

MAYOR AND COUNCIL GOVERNMENT TODAY—THE MAYOR

Popular reliance on an elected chief magistrate

THE increase in the power of the mayor which has characterized the reform era followed naturally in the wake of a great change in the attitude of the people toward elected chief magistrates in general. It is sufficient to recall that Bryce in the same work in which he declared American municipal government to be a failure said of the presidency, "In quiet times, the power of the President is not great".[1] He even entitled one of his chapters "Why Great Men Are Not Chosen Presidents". In the "eighties" of the last century, Congress was universally regarded as the "supreme power in the government".[2] Bryce, however, used a phrase of more prophetic portent than he could have been aware, "The larger a community becomes, the less does it seem to respect an assembly, the more it is attracted by an individual man".[3] The presidency, which has increased not a whit in power and influence in the half century following the "reign" of Andrew Jackson, has in the past forty years come completely to overshadow Congress. Weak *presidents* may have their powers exercised for them by the controlling influences of their parties, but the authority of the *presidency* is undisputed by his fellow partisans in Congress and the nation. More and more the president has tended to become the party leader himself and, as such, to exercise almost dictatorial powers. When Congress contains a majority of

[1] *American Commonwealth* (2nd edition), I, 70.
[2] *Ibid.*, I, 250. See also Woodrow Wilson, *Congressional Government* (1885), and compare with his *Constitutional Government in the United States* (1908).
[3] Bryce, *op. cit.*, I, 74.

the party opposed to the president, there ensues, it is true, a benumbing deadlock. The completeness of these deadlocks, however, only goes to prove the tremendous authority of the presidential office. It has risen to this position because the people have come to regard the president as their own peculiar representative in the government. Representatives and Senators, responsible to local constituencies only, have failed collectively to assume a national representative character. The President's constituency is the nation, and it is only through him that national public opinion can hope to rule. It is because he is backed by a nation that the President dares to use the powers of his office—veto power, appointing power, etc.,—to subjugate Congress. In the states a similar situation has vested the governor with a like dominance of the legislature. By and large, mayors had shown character, courage, and sense of responsibility far superior to councilmen individually or collectively. It is not surprising, therefore, that the people of the cities in the reform era have turned to the mayor as their peculiar representative. The result has been to greatly increase the authority of the mayorship. The mayor alone of all the elected servants of the city is justly entitled to speak for the people of the whole city. The other elective administrative officers are seldom the deliberate choice of the people who nominally elect them. Members of the council, even when elected at large, derive from the people a delegation of power too slender to form the basis of effective opposition to the mayor. The best evidence of the relative importance in the public mind of the mayor and other elective city officers is to be found in the interest displayed in the mayoralty campaign and the almost utter disregard of other candidates which characterizes most city elections.

The dominant position of the President has been achieved without change in his constitutional powers. The more malleable state constitutions and city charters,

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Growth of mayor's power of appointment

however, have been molded into new shape to give expression to popular confidence in the elected chief magistrate. It is impossible to set an exact date when this expansion of the powers of the mayor began. We have already seen that the mayor of Philadelphia enjoyed, from 1799 to 1839, a wide power of appointment, unhampered by council confirmation. New York introduced mayoral appointment of heads of departments, subject to confirmation, in 1857; Boston and Philadelphia, in 1884. In the meantime, the "Evarts Commission," appointed as a result of the Tweed exposures to devise a plan of city government for New York state, recommended a great increase in the mayor's power of appointment. The commission's report led to nothing directly, but in 1880, Brooklyn received a charter which gave to the mayor the power to appoint on his sole responsibility all department heads for a term commensurate with his own. The only limitation on his discretion was that he must exercise it within the first month of his term, otherwise the incumbent was to be regarded as reappointed. Thus began the ousting of the council from all share in administration which has been carried out in some of our largest cities. The fixing of definite responsibility on the mayor worked so well in Brooklyn [1] that the principle became one of the chief planks in the platform of municipal reform. Freed from the curious time limit of the Brooklyn charter it was applied with increasing frequency as the years went by. Today we find such an unlimited, or almost unlimited power of appointment in New York, Boston,[2] Detroit, St. Louis, San Francisco, Indianapolis, Denver, Toledo, and numerous smaller cities. Council confirmation, however, has been retained

[1] See Seth Low's chapter, "An American View of Municipal Government in the United States," in Bryce's *American Commonwealth*, I, Chap. LII.

[2] The council in Boston has nothing to do with appointments, but the mayor's nominations for headships of departments must go to the civil service commission—a state body—which passes on their competence. If its decision is against the competency of the nominee the mayor must make another nomination.

in Chicago, Philadelphia, Baltimore, Los Angeles, Milwaukee, Seattle, and the general run of smaller cities which still adhere to the mayor and council type of government. The appointment of minor officers and employees is ordinarily vested in the heads of departments, who exercise it under more or less stringent regulations providing for merit appointment on the basis of examinations.[1]

The power of removal

The power of removal is, of course, a necessary supplement of the power of appointment. It is the sanction on which the effectiveness of the mayor's control of the administration rests. It was slower in developing than the mayoral appointive power—the Brooklyn Charter of 1880, for example, left the question of removal during the term for which an officer was appointed to the courts—but it has gone further. The mayor's power of removal covers ordinarily all officers whom he appoints and no others. It takes two forms: (1) *absolute,* in which the decision of the mayor is final, and (2) *limited,* in which the mayor's order is subject to review by some other authority. The first, or absolute, form presents several variations. In some cities, as in New York, the mayor's order of removal need state no reason for its issuance. In other cities, as in Boston, the mayor must file a statement of his reasons for the removal. The only purposes of this requirement is to let the officer know why he is removed, and to secure publicity. It protects officers from arbitrary removal to the extent that the mayor must have a reason for his act which he is willing publicly to avow. In some cities provision is even made that the officer must have a statement of the reasons for his removal and an opportunity for a hearing before the mayor, after which the decision of the mayor is final. It is doubtful if such a procedure does anything more than waste the mayor's time. The mayor's power of removal, subject in certain cases to one or another of

[1] See Chap. XVII.

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these variations, is practically absolute in New York, Boston, Detroit, St. Louis, Pittsburgh, San Francisco, Indianapolis, Denver and Toledo. In the second, or limited, form, where the question of removal is submitted to some other authority, that authority is usually the council. This is the case in Philadelphia, Chicago, Los Angeles, Milwaukee, and Minneapolis, and most of the smaller cities of the country.[1] It will be noted that this list corresponds very closely with that of the cities which retain council confirmation of the mayor's appointments. The removal power of heads of departments over minor officers and employees is usually restricted by requiring the filing of charges with the civil service commission and a hearing by that body whose decision is final.

The mayor's control of administration under strong-mayor plan

It is obvious that the mayor cannot be properly held responsible for the conduct of the city administration unless he possess perfect freedom in the choice of his principal subordinates. To them must be entrusted a considerable discretion in the direction of their departments. It would be very unfair to hamper a mayor with hostile or even unsympathetic department heads and then try to charge him with responsibility for their behavior. So long as the council has a negative on appointments or removals his control of the administration is not legally complete. He may, if his personality be vigorous enough, master the council and dominate the whole city government. From the hands of a less forceful successor, however, the direction of the administration may slip to the council or a member or members of that body. A city, therefore, cannot be said to have the *strong-mayor* plan of government unless the mayor has unrestricted power of removal and appointment of the heads of departments. While there has been a tendency to put the mayor in this position of exclusive authority, it has been actually done

[1] The Baltimore charter contains a curious compromise between the absolute and limited power of removal, the mayor's power being absolute during his first six months in office and thereafter subject to approval by the council.

in only a few of the larger cities like New York, Boston, and Detroit. In these cities has been worked an almost complete divorcement of the council from the control of administration. It can only interfere with it by passing ordinances regulating administrative procedure, by creating or refusing to create positions, by fixing salaries and by granting or refusing appropriations. Over every such act of council the mayor has a veto and it is only rarely that the necessary two-thirds or three-fourths majority can be mustered to override it. In the matter of finance several cities give the mayor the sole power of initiating appropriations, thus placing in his hands a further means of subjecting the council to his will. There need be no hesitation in fixing responsibility for the conduct of the administration under the strong-mayor plan in the mayor.

The mayor's control of administration

From a close approximation to this exclusive control, the power of the mayor in relation to administration gradually recedes, under the weak-mayor plan, to next to nothing. Among weak-mayor cities the tendency has been constantly to strengthen the legal position of the mayor short of giving him complete executive authority. Whether many weak-mayor cities will eventually graduate into the strong-mayor class is a question to which one would not willingly risk an answer. There is reason to believe that, much as the American public is disposed to pin its faith to elected chief magistrates, it prefers to give them the substance of power without its form. It still seeks to avoid giving unchecked power to any individual. This may in a measure account for its apparent preference of the manager to the strong-mayor plan. To the extent of his capacity, the mayor, even in many cities which fall far short of having the strong-mayor plan of government, may determine the quality of administration. Even a moderate development of the power of appointment and removal, taken in connection with his increased moral and political authority, has

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been enough to give the modern mayor in general a genuine control over the activities of the city administration. The charter's injunction that he see to it that the laws of the state and ordinances of the city are faithfully executed is no longer an empty form of words. His responsibility for the executive conduct of the city is not today a mere supposition.

The mayor's cabinet

Of course, in very large cities it is impossible for the mayor to give personal attention to many of the details of administration. He must rely on the loyalty, intelligence, and zeal of his principal subordinates, *i.e.*, the heads of departments. These officers are frequently spoken of as the mayor's "cabinet," and it is a common practice for him to meet with them at intervals to discuss the problems of the city. No better device has been worked out for securing efficient coöperation by the various branches of the city service. It possesses an even greater value as a means of keeping the mayor free of the danger of a too implicit reliance on his own judgment. No man is good or wise enough to be a dictator of the affairs even of a city. If the mayor is entrusted, as he is in some cities, with powers which are essentially dictatorial, the only chance of escape is through the practice of consultation with his colleagues in the administration. Many mayors deal with their departments' heads individually and sometimes chiefly by official communications. This is almost inevitable if the number of departments is very great.

Relation of the number of departments to the mayor's control of administration

There has been a good deal of discussion as to the proper number of departments into which the administrative service of the city should be divided. The desirability of having a mayor's cabinet has a direct bearing on this question. There should not be more department heads than can comfortably sit down together with the mayor and deliberate on the needs of the city. If the number of departments is very great the mayor's task of supervision becomes too difficult. The same point

has been repeatedly made in discussions of the reorganization of state administration. An executive can maintain effective relations of supervision and control only with a relatively small number of authorities. Fifty or a hundred such authorities, as is often the case in state government, are obviously far too many. In small cities there has, in recent years, been a tendency[1] to limit the number of departments to five:

(1) Safety—including police and fire;
(2) Works—including streets, sewers and all engineering and construction work;
(3) Welfare—including health, parks, playgrounds and charities;
(4) Finance; and
(5) Law.

In larger cities, the number may well increase, for departments, to be well administered, should be of wieldy proportions and not contain services of too diverse nature. When the latter situation exists, there is danger that the head of the department will have relatively less interest in one part of his work than another, to the disadvantage of those services in which he is less interested. Out of the conflict of the forces which tend to increase the number of departments and the principles which counsel its reduction, the actual organization in each city must be determined.

The charter of Greater New York names fifteen departments, the heads of all but one of which, the department of finance, are appointed by the mayor.[2] This is by no means an excessive number. Philadelphia has seven principal departments, among which the major tasks of city government are distributed. Their heads

[1] Brought over from the commission and manager plans.

[2] Department of (1) Finance, (2) Law, (3) Police, (4) Water Supply, Gas and Electricity, (5) Street Cleaning, (6) Plant and Structures, (7) Parks, (8) Public Welfare, (9) Correction, (10) Fire, (11) Docks, (12) Taxes and Assessments, (13) Education, (14) Health, and (15) Tenement House.

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are appointed by the mayor, subject to confirmation by the council. In addition, the mayor appoints a city collector, a city architect, a purchasing agent and a majority of the members of the Board of Health, Art Jury, Zoning Commission, etc.[1] Chicago lists twenty-three heads of departments,[2] some, of course, of minor importance. Detroit has nineteen officers and boards directly dependent on the mayor. In Boston, the mayor appoints nearly forty distinct authorities, many of them, of course, of no great importance. There is doubtless an artificial crowding together of dissimilar services in the Philadelphia organization. There can be no more doubt that Boston has too many independent authorities. Fifteen departments are enough in even the largest city. It should not be forgotten that the United States government has only ten. Multiplication of the points at which the mayor must touch the administration may not weaken his political position, but it certainly lessens his administrative authority.

Relation of type of departmental organization to mayoral authority

The mayor's authority over the administration is affected not only by the number of departments, but by the type of departmental organization. His influence is at a maximum when the headship of the department is vested in a single individual appointed and removed at his pleasure. It is much less where the department is directed by a board, especially when, as is usually the case, the members of the board retire in rotation. The Los Angeles charter of 1924 carries to its greatest extreme this board system of administration. All of the important activities of the city, except finance, are distributed among seventeen[3] boards appointed by the mayor, subject to confirmation by the council. These

[1] There are, however, numerous other authorities in the Philadelphia area elected by the people or appointed by the council, the courts, etc. See Bureau of Municipal Research of Philadelphia, *Philadelphia's Government* (1924).

[2] See annual report of Hon. William E. Dever, mayor, to the city council of the city of Chicago, October 22, 1924.

[3] Including the Board of Public Works.

boards each consist of five members appointed for five years, one retiring each year. The term of the mayor himself is but four years. It is obvious that it is only in the last year of his term that a majority of the members of a board will normally be his appointees. His appointments will actually have much more influence during the term of his successor than during his own. Needless to say, this charter is today unique in the extent to which it presses the board system. The use made of boards varies a good deal from city to city. In New York but four of the fifteen departments are under the direction of boards. In Chicago even smaller use is made of boards.[1] Similarly, in Philadelphia such boards as there are have little to do with the main work of administration. In Detroit, Boston, San Francisco, and many other cities, the board system is employed extensively enough really to interfere with the absoluteness of the mayor's administrative authority.

Independent elective officers

The extent of the mayor's power is somewhat limited by the existence of independently elected officers with important executive functions. It is very common to provide for the popular election of the chief financial officer usually known as the controller or auditor. This is the case in New York, Chicago, Philadelphia, St. Louis, Baltimore, Pittsburgh, and many other cities. There are strong arguments in favor of having this officer, who passes upon the legality of all attempts to draw money from the city treasury, independent of the mayor and the rest of the administration. Only so, it is contended, can he serve as a real check on their activities. The chief objection is that the persons elected sometimes do not possess the proper professional qualification for such a position. Philadelphia goes further by electing not only a controller, but a treasurer, and a receiver of taxes. Such officers and a city attorney are

[1] This statement has no reference to the very wide use of boards, elective and otherwise, independent of the city government, which exists in the Chicago area. See Chap. XV.

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frequently elective. The number of elective administrative officers, besides the mayor, now rarely exceeds three in the larger cities of the country. Philadelphia and San Francisco elect much longer lists of officers, but they do so as counties rather than as cities.[1]

Legislative powers of the mayor: (1) recommendation and initiation

Like the governor and the president, the mayor invariably has the power of suggesting measures to the consideration of the council by "message". The chief value of the message, in whatever field of government employed, is as a means of publicity. It is used, not so much for the purpose of calling the attention of the legislature to a subject, as for calling that subject to the attention of the public. The message derives its appeal to the people from the importance of the person issuing it, and his importance is a compound of his official and personal character. With these facts in mind it need not be surprising that the "message" means less on the average in city than in state or national politics. It is, however, frequently used with effect in focusing public opinion on particular projects and in placing responsibility for necessary action squarely on the council. In a number of cities the mayor is charged with the very important duty of preparing and presenting to the council the annual budget of revenue and expenditure. In another group of cities, including New York, St. Louis, Baltimore, and Milwaukee, the mayor is a member, frequently chairman, of a board of estimate, made up of officers of the city government,[2] which is responsible for the preparation of the budget. On this board the mayor's influence is, more often than not, predominant. In a few cities, of which Boston is the most striking example, no appropriation of money can be made except upon the mayor's recommendation, the council being allowed to reduce or reject these recommendations but in no case to increase them. In New York and some other cities

[1] See Chap. XV.

[2] Known in New York as the Board of Estimate and Apportionment.

the power of the council in dealing with the budget prepared by the board of estimate is similarly restricted.

To appreciate the importance of the mayor's power of recommendation in matters of finance it is necessary to recall that municipal legislation differs from state and national legislation in being very little concerned with broad general principles and policies, but rather taken up with the organization of concrete services which practically always involve the expenditure of money. Indeed, it may well be doubted if most of the acts of city councils are properly "legislation" at all. The most important decisions they make are with regard to what services to undertake and how much to spend on them. It thus comes to pass that the power of the purse, significant enough in all realms of governmental activity, is well-nigh the whole thing in city government. It is easy to see, therefore, that if the mayor is given sole power of initiating appropriations, the council being left with only the negative power of reducing or rejecting his proposals, the mayor becomes, to all intents and purposes, a municipal dictator. The council seldom desires to reduce or reject items of appropriation and, in practice, is forced to take the budget as it gets it. If the budget comes from a board of estimate dominated by the mayor the actual result is not much different. Even where, as in Chicago, Philadelphia and a large group of smaller cities, the council has full power to deal as it wishes with the budget submitted by the mayor, the fact that the budget reaches the council carefully worked out in every detail and balanced against expected revenue greatly limits the council's ability to alter it. There has come in city government a general acquiescence in the theory of the "executive budget," *i.e.*, that the officer responsible for the conduct of administration should have the power to plan the apportionment of the money available for appropriation among the several administrative services. Only in this way can a coherent plan for the whole adminis-

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tration be made. If the plan is not made by the head of the administration—if he is obliged to work with more money in one service and less for another than his judgment approves—how can the head of the administration be said truthfully to be responsible for its results? Whether or not the charter permits his recommendations to be freely altered, they are in practice coming to be usually accepted. Coupled, as the power of initiating the budget always is, with the power to veto items of appropriation, the mayor's financial powers are generally so complete as to make him the undisputed head of the city government.

Legislative powers of the mayor: (2) veto

The veto power of the mayor was already well established long before the era of reform set in. It would now be hard to find a city in which it does not exist. Ordinarily, it applies to all measures passed by the council, whether in the form of ordinances or of resolutions. It is almost invariably in the qualified form, Boston being the only important city where the mayor's negative is absolute. In most cities a two-thirds vote of the council is all that is necessary to override a veto; but in Baltimore a three-quarters, and in San Francisco a seven-ninths, majority is called for. Philadelphia makes it a little easier for the council by fixing the requirement at three-fifths. New York adheres to the prevailing two-thirds for ordinary measures, but puts the figure at three-quarters for financial measures. The great development in the mayor's veto in the period of reform has been in its extension to items of appropriation ordinances. In 1888, outside of the three largest cities, few mayors had this power. Today it is an active instrument in the hands of the majority of them. So long as the mayor had to accept or reject the annual appropriation ordinance as a whole, the council could crowd into it items of which he disapproved, quite confident that he would not wreck the whole administration by vetoing the ordinance. In fact, without the power to veto items, the

mayor had no effective negative in financial matters. In this connection it should be noted that city charters usually prohibit the council from including matters relating to more than one subject in any ordinance except the annual appropriation ordinance. Otherwise the council might rival Congress in the use of "riders," *i.e.*, doubtful measures attached to good ones and riding through on their merits.

Legislative powers of the mayor: (3) an estimate of their extent

Except in cities, like Boston, where his legal position is supreme, the influence of the mayor in the legislative field is a variable, dependent largely on his personality and the use of his other powers to control the council. The extent of his influence is governed by the same principles which determine that of the President over Congress or the governor over the state legislature. If his control of the council is, on the whole, less effective than that exercised by the President over Congress or the governor over the state legislature, it is because of greater weakness of party ties and the more immediate force of citizen opinion upon the council.[1] He may use the prominence of his position to overwhelm the council before the public. The mayor has the ear of the public to a degree which councilmen individually or collectively cannot rival. What he says is "news". Even in small cities, the reporters wait on him twice a day for items concerning his plans and projects. He may buy council support by the use of his power of appointment, or what is perhaps more common, he may secure in this way the support of the politicians or organizations who control the councilmen. His veto is a potent threat to bring to nothing the pet projects of councilmen who seek to thwart him.

Terms and salaries of mayors

The increasing power and influence of the mayor has been witnessed by a general tendency to longer terms and higher salaries. In 1888 the annual election of the mayor was not uncommon, and two years was the normal

[1] See Chap. X.

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term. Among the large cities of the country, only Philadelphia, St. Louis, and New Orleans elected their mayors for four years. At present the term is four years in New York, Chicago, Philadelphia, Boston, St. Louis, Baltimore, Los Angeles, San Francisco, Milwaukee, Indianapolis, Denver, Columbus, and Louisville. In the smaller cities it is usually two years. The largest current salary is $25,000 in New York City. No city of more than 200,000 now pays less than $5,000. From this figure mayors' salaries trail off to nothing. In the larger cities the mayor, though not legally required to do so, in practice must give all his time to the work of the city. In places of less than 100,000 he usually finds time to keep up his private business, and the smallness of his salary practically compels him to do so.

Mayors and their influence

Mayors have proved very much the best of all the elective officers of municipalities. Even in the worst days of city government, machines and bosses usually made some concession to public opinion in the nomination of men of at least seeming character and ability for the mayorship. In recent years, the mayors of our large cities have compared very well with governors, United States senators, and other prominent elective officials. In the smaller cities they have been the best which municipal politics has brought forth. They are, of course, mainly politicians interspersed with occasional "business" candidates and reformers. Too many of them play their opportunities as mayor with the hope of building a political future for themselves. Their success in this, however, has been singularly small. Mayors, in spite of themselves, usually manage to accumulate enough enemies to injure their political availability irretrievably. A few, like Whitlock in Toledo, Johnson in Cleveland, and Harrison in Chicago, have built national reputations for themselves by the vigor of their administration and the broad popular appeal of their policies. It is possible, although unusual, for a mayor to develop a personal ma-

chine, as has Rolph of San Francisco, who has been mayor of that city continuously since 1912. The mayor may become the local leader of his party, but the mayor's easy accumulation of hostility is apt to bring it about that he is passed over in the party organization for some one less distinguished but more generally popular. On the other hand, the mayor may be a pawn in the hands of a boss or a mere cog in the machine. The tendency in recent years, however, has been distinctly away from this situation. Where the mayor is not legally absolute and does not develop a personal position of leadership, the council and its committees usually become the center of influence in city government. In the numerous small cities with mayor and council government this is very often the case. In such cities the mayor's administrative powers and personal prestige are on so small a scale that he lacks the opportunity to dwarf the legislative body which the direction of a huge administrative organization affords.

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There is an excellent monograph on the subject of the mayor by R. M. Story, entitled "The American Municipal Executive" (1918), which was published as Volume VII, Number 3, of the University of Illinois *Studies in the Social Sciences.* W. B. Munro, *Municipal Government and Administration,* I, 373-395, summarizes many of the principal facts relating to the modern mayorship in the United States. An illuminating description of the duties of the mayor is to be found in John P. Mitchel, "The Office of the Mayor," *Proceedings of the Academy of Political Science in the City of New York,* V, 479-494 (1915).

Such works as Tom L. Johnson, *My Story* (1911), and Brand Whitlock, *Forty Years of It* (1914), throw a good deal of light on the office of mayor from the point of view of two of the most noted mayors of recent years. Seth Low's chapter "American View of Municipal Government in the United States" in Bryce's *American Commonwealth,* I, 694-711, is interesting as the first account of a strong-mayor type of government.

The provisions relating to the mayor in the charters of New York, Boston, and some other cities are reprinted in Reed and Webbink, *Documents.* In the same work will also be found the financial provisions of the charter of the city of Cleveland. While the charter of Cleveland is of the city manager type, the provisions relating to budgetary procedure, etc., are typical of those to be found in many charters of the mayor and council type.

CHAPTER XII

CITY GOVERNMENT BY COMMISSION

WHILE the main current of municipal development had been sweeping on towards the concentration of power and responsibility in the mayor, here and there had cropped out bolder experiments in municipal organization. Councils of desperation in most cases, many of them may be dismissed as mere vagaries of their authors, which left no permanent impression on the development of city government. Some, however, deserve notice both because of their intrinsic importance and because they ultimately led to the wide-spread use of the so-called commission plan.

The "administration" system in New Orleans

In 1870, a "carpetbagger" legislature in Louisiana adopted for New Orleans a very novel form of city government, popularly known as the "administration" system.[1] A mayor and seven administrators—of finance, commerce, improvements, assessments, police, public accounts, and water works and public buildings—were elected at large. The mayor's salary was $7,500, while that of each administrator was $6,000. Their term was two years, the mayor and three administrators being chosen at one annual election, and the remainder at the next. Each administrator was the head of the department indicated by his title. The mayor exercised a general supervision over the government as a whole. Collectively, the mayor and administrators constituted the city council. Appointments were made by the council, upon the recommendation of the administrator concerned. As will become apparent, this scheme of organization was almost exactly that of the commission plan

[1] Acts of Louisiana. Extra session 1870, Act No. 7.

of the present day. William W. Howe, in his *Municipal History of New Orleans*,[1] thus describes the practice of the city council in the transaction of its business: "A small and compact body, its meetings were as business-like as those of a bank directory. Its custom was to assemble in the mayor's parlor, generally on the day before the regular weekly meeting; and sitting in committee of the whole, to discuss with any citizens who chose to attend, such subjects of public interest as might be brought up. Reporters from the daily press were present, and the journals of the next morning gave full particulars of the exchange of ideas. If the subject seemed very important and difficult, leading citizens were invited by letter or advertisement to attend and give their views."

Whatever may have been the merits of the plan, it is certain that by the time when white supremacy was restored in 1877 the city's financial condition was desperate to the point of bankruptcy.[2] Following the adoption of a new state constitution in 1879, the demand for a change became insistent, and in 1882, a charter of the ordinary mayor and council type was secured from the legislature.

Commission plan for the District of Columbia

In 1873, the government of the District of Columbia was bankrupt. The committee of Congress, appointed to investigate its affairs, recommended what was in effect a receivership. It was avowedly a makeshift until a proper framework for the government of the District could be devised.[3] Acting on this recommendation, Congress (June 20, 1874) temporarily vested executive authority in the District in three commissioners, to be appointed by the President, by and with the consent of the Senate.[4] No one at the time had the idea that any-

[1] Johns Hopkins University Studies, Seventh Series, No. IV., 18 (1889). The author was a prominent member of the New Orleans bar.

[2] Ella Lonn, *Reconstruction in Louisiana* (1918), 252, 342.

[3] Report of the Committee on the Affairs of the District of Columbia. 43d Congress, 1st Session, Senate Report No. 353.

[4] 18 Statutes at Large, 116.

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thing permanent was being created. Nevertheless, the act of July 1, 1878, which purported to provide definitely for the government of the District,[1] simply reënacted, with slight modifications, the provisions of the act of 1874, and a half-century after its establishment this system is still in successful operation.

Two of the three commissioners are appointed from among the residents of the District for a term of three years. They are never members of the same political party. The third is an officer of the Engineer Corps of at least fifteen years' standing, who is designated by the President for this duty. The commissioners choose, each year, one of their number to act as president. Besides presiding at meetings of the board, he acts as the channel of communication between the commission and the United States government on the one hand, and the outside world on the other. The commissioners, *as a body,* are held responsible for the executive management of the District and the adoption of police regulations. The larger matters of municipal legislation, including the all-important matter of appropriations, are handled directly by Congress. For purposes of convenience, the various branches of the District's administration are assigned to one or another of the commissioners. To the engineering commissioner, of course, are assigned all matters relating to public works, but otherwise the assignments are neither logical nor permanent, being determined by the circumstances of the moment. The authority actually enjoyed by the individual commissioners in the control of the services intrusted to them depends, of course, on their mutual confidence. Legally, all power belongs to the board as a board.

The government of the District a success

That, on the whole, the government of the District has been admirably carried on under this system cannot be doubted. It is impossible here to present the numerous evidences of efficiency and vision which are to be found

[1] 20 Statutes at Large, 102.

in its administration. In some respects, the management of the municipal affairs of a great capital city, where almost the only industry is government, is peculiarly difficult. The pressure for favor from senators, representatives, officials, diplomats, and the politically powerful of every state in the Union is heavy and continuous. That the commissioners have sustained such a strain without material sacrifice of the public's interest is very creditable to them and the system under which they labor. The chief ground of complaint against the government of the District, and an invincible obstacle to its imitation elsewhere, except under circumstances of extreme emergency, is the fact that it does not rest on the votes of the people. At times there has been considerable agitation for a more democratic arrangement. Two obstacles, however, have hitherto prevented such a change: first, the fact that the United States now pays forty percent of the expense of the District government; and second, the embarrassing question of negro suffrage. In point of fact, the public opinion of the District is by no means ignored in its administration. When the President sends the name of a new civil commissioner to the Senate, it is referred to the Committee on the District of Columbia, which gives every opponent an opportunity to be heard. Several times, on the recommendation of the Committee, the Senate has refused to confirm the appointment. In every important section of Washington there is a local association or improvement club,—some of them with a large and influential membership. The commissioners make a practice of consulting these associations, or their representatives, before inaugurating important changes of policy. If the commissioners lag behind the desires of the people in any matter, delegates are chosen from these associations, who meet to express the feeling of the District; and the commissioners are inclined to be attentive to their requests.

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Commission principle applied to Memphis in time of disaster

The yellow fever epidemic of 1878 was the culmination of a series of misfortunes which reduced the city of Memphis to complete prostration. The practice of issuing scrip to tide over financial crises had left a vast, worthless mass of municipal obligations, which could be bought for a song, but which the city was obliged to receive at par for taxes. The city was over-burdened with debt and had no real income.[1] In January, 1879, the legislature passed three acts: one abolishing the "city" of Memphis;[2] the second providing for the collection of the taxes due the old city and the administration of its assets for the benefit of creditors;[3] and the third, creating taxing districts "in order to provide the means of local government" wherever city charters were revoked or surrendered.[4] Thus, the former city of Memphis became the "taxing district" of Shelby County. The General Assembly reserved to itself the right to levy taxes within the district, and the city authorities were forbidden to "issue bonds, notes, scrip or other evidences of indebtedness" or to assume any obligation in excess of the proceeds of the tax levied for the particular purpose in question. Subject to these restrictions, most of the administrative functions of an ordinary city government were placed in the hands of a board of three fire and police commissioners, one of whom was appointed by the governor, one by the Quarterly Court, and one elected by the people. In the making of contracts, they shared their power with a Board of Public Works, one appointed by the governor, one by the Quarterly Court and three elected by the people. The concurrence of four of these gentlemen was necessary to the validity of any contract. Together the two boards constituted the "Legislative Council," with power to pass "ordinances or local laws."

[1] J. H. Malone, "Municipal Condition of Memphis, Tennessee," *Proceedings of Baltimore Conference for Good City Government* (1896), 110-116.
[2] Acts of 1879, Chap. 10.
[3] Acts of 1879, Chap. 92.
[4] Acts of 1879, Chap. 11. See Reed and Webbink, *Documents.*

All the members of both boards were made elective in 1881.[1] The name of the city of Memphis was restored in 1891.[2] In 1893, a mayor elected directly by the people became president of the Board of Fire and Police Commissioners,[3] and a limited taxing power was restored to the city.[4] With a few other slight modifications, the legislation of 1879 remained in effect until 1910, when a commission government on the Galveston model was adopted.

Results in Memphis

The government created by the act of 1879 met the immediate emergency with success. If the repudiation of the debt of the old city was intended, that object was thwarted by the supreme court of the state [5] and by far the greater portion was successfully refunded by the new government. Colonel Waring was engaged to design a new sewer system, which was promptly constructed. A fine water supply was established. Miles of sound pavement took the place of rotting "Nicholson" pavements.[6] The substantial retention of the system for more than twenty years after the emergency was passed proves the degree of satisfaction it gave the people of Memphis. That the plan was not at once copied is probably due in part to its apparent complexity,—an almost invincible obstacle to its popularity with the larger American public. Further, the name "taxing district," with the implication of municipal suicide and debt repudiation which, rather unjustly, attached to it, naturally repelled seekers for the secret of good city government.

Emergency measures in Mobile

At almost the same time, Mobile, Alabama, was undergoing a similarly drastic operation for a like disease. On February 11, 1879, the Alabama legislature "vacated and annulled" the charter of Mobile, and provided for

[1] Acts of 1881, Chap. 96.
[2] Acts of 1891, Chap. 229.
[3] Acts of 1893, Chap. 95.
[4] Acts of 1893, Chap. 84.
[5] O'Connor *v.* city of Memphis, 6 Lea 730.
[6] An excellent account of the first years under the new system is to be found in an article by W. J. Kennedy in *Southern Bivouac,* V, 307.

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the administration of the assets of the defunct corporation by three commissioners.[1] A second act, passed the same day, incorporated the Port of Mobile and created, as its governing body, a Police Board of eight members.[2] One was required to be a resident of each of the eight wards into which the Port was divided, but all were elected at large for a term of two years. Their powers were limited to the maintenance of police and fire protection and other absolutely essential services. They might, in no case, spend more than $100,000.00 a year. At first they chose a president from their own members, but, at the next session, his election was intrusted in the people.[3] The Police Board had but a brief career, in which it did not much distinguish itself. The legislature, in its session of 1886-87, substituted for it the traditional mayor, aldermen, and councilmen for the Port of Mobile.[4]

The Galveston disaster

The city of Galveston stands at the extreme eastern end of a long, narrow island paralleling the shore of the Gulf of Mexico. The island lies low to the water, but the slight normal rise and fall of the tide left its inhabitants in apparently perfect security until, in September, 1900, a West India hurricane piled the waters of the Gulf to a devastating depth upon the unprotected city. Six thousand eight hundred lives were lost and over four thousand homes were swept away. The desertions which always follow death and disaster brought the city's population down from 45,000 to about 25,000. The property loss was incalculable. In this juncture, the old government of the city collapsed. It consisted of a mayor and twelve aldermen, elected at large with the usual division of the functions of government. It had worked not worse, and perhaps even better, than that of most American cities of the period, but following the flood, its feeble-

[1] Session of 1878-9, Act No. 307.
[2] Session of 1878-9, Act No. 308.
[3] Session of 1880-1, Act No. 264.
[4] Session of 1886-7, Act No. 152.

ness and inefficiency were such that it was soon entirely ignored by the public. The citizens found their real leadership in the "Deep Water Committee," a body of business men which had been working on plans of harbor improvement.

Temporary remedy becomes a permanent plan

About a month after the storm, this committee, working over plans for the reorganization of the city government, hit upon what seemed to them a hopeful project. A committee of three was appointed to formulate it. As a result, a measure was presented to the Texas legislature at the opening of the 1901 session, providing for the government of Galveston by a commission of five members. The measure, as introduced, provided for the appointment of all the commissioners by the governor.[1] But this proposition was so vigorously opposed that, before its adoption, the bill was amended so as to make two of the commissioners elective. Within two years the Court of Criminal Appeals, the court of last resort in such cases, invalidated a city ordinance on the ground that the provision of the charter for the appointment of three commissioners was unconstitutional. It based its decision partly on the right of the community to govern itself but more particularly on the clauses of the constitution which gave to city electors "the right to vote for mayor and all other elective officers." Not much can be said for the reasoning of the opinion, but it was enough to necessitate the abandonment of the appointive feature of the Charter.[2] Accordingly, by an act approved March 30, 1903, the whole commission was made elective. Thus, what might have been only an emergency measure, as short-lived as the emergency it was created to fill, be-

[1] E. R. Cheesborough, *Galveston's Commission Form of City Government* (1910).

[2] Ex parte Lewis 45, Texas Crim. App. 1 (1903). See discussion of inherent right of local self-government in Chap. V, and of the constitutionality of proportional representation in Chap. XV. The same year the Supreme Court of Texas, in a civil case, upheld the constitutionality of the Galveston charter (Brown *v.* City of Galveston, 97 Texas 1).

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came, as the result of what is generally regarded as a peculiarly wrongheaded judicial decision, the ancestor of a new and vigorous type of city government.

The nature of commission government

The term "commission government," as applied to the system established in Galveston, means something more than the vesting of all municipal powers in a small body of men. It implies the further fact that these men are individually the salaried heads of the departments into which the city administration is divided. In this respect, a city commission on the Galveston model differs from the selectmen of a New England town or board of county commissioners. The commission system may be described by saying that the powers of the municipality are conferred upon the body, which acts through its own members in translating these powers into action. Each commissioner conducts the affairs of his departments subject to the control of the commission as a whole. This characteristic relationship of department heads and governing body is the mark by which the commission government may be known, whatever the variations in the details of its structure. The number of commissioners has usually been five, but it has frequently been three or seven. They are ordinarily elected at large, but in a few cities the ward system has been preserved. There is obviously nothing in the theory of commission government which limits it to any particular number of commissioners or method of election. What is most truly distinctive in the system is a complete merging of legislative and executive powers in the hands of the same small group. Not only are there no checks and balances, but there is no differentiation of function between representatives and administrators. Commission government, therefore, is a direct defiance not only of traditional American theory, but of the whole world's experience with governmental organization.

In Galveston itself the commission consists of a mayor-president and four commissioners, elected at large every

The plan in Galveston

two years. The mayor-president presides over the meetings of the commission. He is charged with the duty of seeing that the laws are faithfully executed and possesses all the "rights, powers, and duties of mayor conferred by the constitution and laws" of the state. In case of "riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order", he has wide power to create special officers to meet the emergency. The charter requires him to devote at least six hours a day to these duties and provides him a salary of $2,000 annually. In spite, however, of his somewhat ponderous title, he is in ordinary times simply the presiding officer of the commission, with a vote in its proceedings, but with no independent powers. Each of the other commissioners is assigned by action of the commission itself to the headship of one of the following departments: (1) police and fire; (2) streets and public property; (3) waterworks and sewerage; (4) finance and revenue. These titles are fairly descriptive of the scope of their respective departments. The commissioners receive $1,200 a year and the charter is silent as to the amount of time they shall devote to their duties. In practice, part time service only has been expected—such time as business men can afford to give to public affairs. The key to the relation of the individual commissioners to the commission as a whole is to be found in the fact that while the power of appointment belongs to the body, it is the custom for nominations to be made by the commissioner at the head of the department in which the vacancy exists.[1] Each commissioner plans, proposes, and initiates before the commission measures relating to his department. In all such matters his influence is usually decisive. In point of law, however, every important act of the city must be performed by the commission as a body.

There can be no doubt of the striking, almost dramatic,

[1] Cheesborough, *op. cit.*

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Its success

success of the new Galveston government.[1] It was faced with the consequences of financial mismanagement and material disaster. Expenses had long exceeded receipts, until a debt of approximately $3,000,000 had been accumulated. Interest had been defaulted and Galveston bonds sold at sixty cents on the dollar of par value. The commission, therefore, started with nothing more substantial than a deficit to build a great sea-wall, raise the grade of the city, reconstruct its streets, sewers, water system and other works and buildings. A quarter of the assessed valuation of the city had been wiped out by the flood. Yet within ten years, without imposing an undue burden on the taxpayer, it had financed its share of these projects, paid all current expenses, paid the interest upon its vastly increased indebtedness, and paid off a material portion of the principal. How much of this success was due to the form of government and how much to the character of the commissioners, or the grim necessity of the situation, no one will ever know. Something was doubtless due to the plan itself. George Kibbe Turner, who was sent by *McClure's Magazine* to investigate the Galveston situation, is reported to have said, just before leaving the city: "The Galveston plan is a splendid one; the plan is superior to the men in office. While your mayor-president and commissioners are excellent men, are capable and attend strictly to business, there is really but one exceptionally strong man in the board. In brief, I think that the plan itself is largely responsible for the splendid showing made by your city government."[2] The contrast between ordinary council

[1] See G. K. Turner, "Galveston: a Business Corporation," *McClure's Magazine*, XXVII, 610-620 (October, 1906), which remains the best statement of the results accomplished; A. B. Hart, "Observations on Texas Cities," *Boston Transcript*, April 11, 1908 (republished in C. R. Woodruff, *City Government by Commission*, 1911); W. B. Munro, "The Galveston Plan of City Government," *Proceedings of the Providence Conference for Good City Government*, 1907 (republished in Woodruff, *op. cit.*); E. R. Cheesborough, *Galveston's Commission Form of Government* (reprinted from the *Galveston Tribune*, December 31, 1909).

[2] E. R. Cheesborough, *Galveston's Commission Form of City Government.*

procedure and the picture of five men about a directors' table, with their attorney and other officers seated nearby, calmly and conversationally settling the business affairs of the city, was inescapable. Every observer commented upon it. All business was transacted with an openness, despatch, and absence of political "hokum" which warmed the hearts of the all but despairing searchers for good city government of twenty years ago.

Commission plan in Houston

Imitation of the Galveston experiment did not come at once. It was not until 1905 that the neighboring city of Houston adopted what is perhaps best characterized as a modified commission government. The charter provided for an independently elected mayor, with a veto and power of appointment, who, with four aldermen, constituted the city council. On its face, this falls completely outside our definition of commission government. The four aldermen, however, as well as the mayor, were obliged to give their full time to work of the city, and, by ordinance, each was the "active chairman" of a committee in charge of a department. In practice, therefore, the aldermen actually held much the same position as the commissioners in Galveston.[1] The Houston charter in time became the ancestor of a lesser breed of quasi-commission governments, in some of which the spirit, as well as the letter, of the Galveston original was lost.

Imitation of the Galveston plan, 1907

At the same time, knowledge of Galveston's heroic achievement was filtering up from the Gulf border to the rest of the United States. A citizen of Des Moines, Iowa, James G. Berryhill, whose business took him to Galveston several months a year, interested his fellow townsmen in the commission idea, and an unsuccessful attempt was made to secure from the 1906 session of the Iowa legislature an act permitting cities to adopt the commission form of government. In October of the same year appeared, in *McClure's Magazine,* George

[1] H. B. Rice (Mayor of Houston), *Address on the Commission Form of Government,* Charlotte, N. C., November 18, 1908.

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Kibbe Turner's brilliant article, "Galveston, a Business Corporation". For the first time, the public at large became aware that in a far-off Texas city, with a strangely simple municipal constitution, city business was transacted honestly and cheaply. At the opening of the new year (1907), Dallas, Dennison, El Paso, Fort Worth, and Greenville, Texas, and Lewiston, Idaho, received special commission charters from their respective legislatures; while Iowa, Kansas, North Dakota and South Dakota provided, by general law, forms of commission government which might be adopted by individual cities. Before the year was out, Des Moines and Cedar Rapids had taken advantage of the law, and the learned pundits of the National Municipal League had listened to the first of many discussions of commission government at the Providence Conference for Good City Government. Henceforth, the spread of commission government was too rapid to be chronicled here in detail. Within a decade commission governed cities were numbered by the hundreds.

Additions to the plan: (1) initiative, referendum, and recall

Up to 1907, the most vigorous objection raised to the adoption of commission government had been that it was unsafe, not to say un-American, to concentrate so much power in the hands of one small board. Bred up to the idea that "checks and balances" were necessary to the protection of liberty, the people could not be readily brought to surrender them, even in the limited field of municipal government. If the old checks were to be abandoned, new ones must be devised before the commission movement could become really popular. The charter of Dallas, and the commission laws adopted almost simultaneously in Iowa and South Dakota, offered as these new checks the initiative, referendum and recall.[1] If priority is to be assigned, it doubtless belongs

[1] The Fort Worth charter provided for the referendum and recall, and that of Lewiston, Idaho, for the initiative and recall, with a referendum on franchise ordinances.

to Dallas, whose charter was formulated early in 1906.[1] The honor involved, however, is slight enough, all the provisions being practically identical with amendments added to the charter of Los Angeles in 1903.[2]

(2) Majority, non-partisan elections

Another reform of the first importance which found a place in the commission legislation of 1907 was the system of majority non-partisan elections. The Dallas charter provided for the nomination of candidates for mayor and commissioners upon petitions signed by one hundred electors. At a first, or primary, election only those candidates receiving a majority were declared elected. For the remaining positions, the two candidates receiving the highest number of votes contested at a second or final election. Nothing was said of non-partisanship or the presence of party designations on the ballot, a situation easily explicable in view of the overwhelming dominance of the Democratic party. The South Dakota law provided for easy nominations by petition and a single election without party designations on the ballot. The Iowa act included non-partisan nominations on a petition signed by twenty-five electors, a first, or elimination, election, and final election confined to the two highest candidates for each office.

The Des Moines plan

The vigorous advertising which Des Moines subsequently gave to her "plan" won her an exclusive credit for the origination of these devices, which she by no means deserved. The Iowa law was, however, brief, well-written, and combined all the reforms more perfectly than any of the other measures. Des Moines caught the value of her new government for community promotion purposes and made herself, for the time being, the most talked-of city in America. Henceforth, it was the "Des Moines plan" which chiefly inspired legislators and

[1] J. J. Hamilton, *Dethronement of the City Boss,* admits the influence of Dallas on the Des Moines group who framed the Iowa law.

[2] California Statutes, 1903, 572-575.

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charter makers and left its mark on the form of government of hundreds of communities.

Initiative and referendum reconciled people to concentration of power

This is not the place to comment on the results of the initiative, referendum, and recall in municipal affairs. These devices for popular control of government obviously are no intrinsic part of commission, or any other form of, city government. They have been adopted and used in connection with every such form. It is incontestable, however, that with the public at large they have been regarded as part and parcel of the commission, and subsequently of the manager, plan. They have only the relation to those systems of the chocolate cover to the bitter pill of concentrated power, but, just as the strongest therapeutic agency is but a "brown pill" to the layman's view, so the people took their Des Moines plan straight, without analyzing too closely its constituent elements. The initiative, referendum, and recall undoubtedly, whatever their other merits or defect, helped to reconcile the people to simplified forms of municipal government and thus indirectly contributed to the progress of reform. Non-partisan nominations and elections also proved a popular feature of the Des Moines plan and helped to carry the commission and manager plans with them.

Minor modifications of the Des Moines plan

Certain modifications of the Galveston system which appear in the Des Moines plan acquired, from the prominence given to it, a significance they would not otherwise have deserved. The first was an attempt to increase the weight and influence of the mayor. The statute created for him a department of Public Affairs, and to this department were assigned, by ordinance, the corporation counsel's office, police court, city clerk's office, the public library, and the civil service commission. All this was in addition to the general supervision which is expected of the mayor-president in Galveston. Another modification was involved in leaving to the commission the distribution of functions to the several commission-

ers. More important, however, were the larger salaries provided for mayor and commissioners ($3,500 and $3,000 respectively) and the tacit assumption in practice that these officers were to give, in return, full time service to the city. In this matter, most commission-governed cities have copied, not Galveston, but Des Moines. The result has been that, in the typical commission government, every vestige of differentiation between representative and administrative functions is lost.

Subsequent variations in commission plan

It would be idle to attempt to recount the variations in the commission form of government. Such variations as the election of commissioners to particular offices, or, as in Dallas or Oakland, to positions numbered for election purposes only, are of minor importance. Where, however, the mayor is given the power of appointment or veto, or both, the essential relations of commissioners to commission seem to be broken. Whether such a government is to be classed as belonging to the commission order or not will depend upon the spirit in which it is carried on. We have seen that Houston has in reality a commission government. On the other hand, Boise, Idaho, which received a charter in 1907, almost identical with that of Houston, never made the slightest pretense of running on the commission principle.[1]

The high point of the commission movement

The spread of commission government was extremely rapid from the beginning of 1909 to the close of 1913. Then the rate of its adoption began to decline, although several of the largest cities to adopt it—St. Paul in 1914, San Antonio in 1915, Buffalo in 1916, and Newark in 1917—accepted it later.[2] This decline was coincident

[1] Letters of Mayor Joseph T. Pence to Mayor Hodgehead and Thomas H. Reed of Berkeley, Cal., dated October 26 and November 28, 1910.

[2] No accurate list of commission-governed cities has ever been published, or ever will be. In many states, no available record is kept of the forms of government in force in their several cities. No complete response can be had to questionnaires directed to city authorities. Furthermore, no definition of what constitutes commission government has been generally adopted. Probably as good a list as any is to be found in L. T. Beman, *Selected Articles on Current Problems in Municipal Government* (1923). This list includes 303 cities of over 5,000 population. There may be as many as 200 smaller places which have adopted the plan.

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with the increasing popularity of the manager plan. The maximum number of commission-governed cities,—about 500 if we include all grades of municipalities,—was reached in 1917. Since that time, the number of cities adopting the plan has been about offset by the number of those abandoning it. Since 1920, the commission plan has been positively losing ground, mostly to the advantage of its younger rival, the manager plan. Since 1922, only two or three unimportant places are known to have adopted commission government. The commission idea never succeeded in very deeply invading the ranks of the larger cities. Only twenty cities of over 100,000 population are working under commission charters, while three others abandoned the plan after a brief experience.[1]

Its greatest popularity and most signal successes are to be found in cities of less than 50,000.

In a sense, commission government is widely distributed, since it is found in all but a half-dozen states. There is no major geographical division of the country without several examples of it. The greater part of the commission-governed cities, however, are largely concentrated in a few states: (1) Pennsylvania and New Jersey;

[1] The cities of 100,000 or more which have adopted the commission plan, with their 1920 population and date of adoption, are as follows:

City	*Population*	*Date*
Buffalo, N. Y.	506,775	1916
Newark, N. J.	414,524	1917
New Orleans, La.	387,219	1912
Jersey City, N. J.	298,103	1913
Portland, Ore.	258,288	1913
St. Paul, Minn.	234,698	1914
Oakland, Cal.	216,261	1911
Omaha, Neb.	191,601	1912
Birmingham, Ala.	178,806	1911
Memphis, Tenn.	162,351	1910
San Antonio, Tex.	161,379	1915
Dallas, Tex.	158,976	1907
Houston, Tex.	138,276	1905
Des Moines, Ia.	126,468	1908
Trenton, N. J.	119,289	1911
Salt Lake City, Utah	118,110	1912
Reading, Pa.	107,784	1913
Fort Worth, Tex.	106,482	1909
Spokane, Wash.	104,437	1910
Kansas City, Kan.	101,177	1910

(2) Illinois, and (3) the contiguous southwestern states of Kansas, Oklahoma and Texas. Nearly half of all the commission-governed cities of 5,000 population or more are found in these six states. Texas was the mother state of the idea, and in Kansas, Illinois and New Jersey, favorable optional acts made it easy to adopt. Pennsylvania, in 1913, made commission government compulsory for third-class cities.[1] Commission-governed cities are likewise sowed rather thickly in a region based on Iowa and Illinois and including Michigan, Wisconsin, Minnesota, and North and South Dakota. They are likewise not uncommon in another group of states stretching to the southward: Missouri, Kentucky, Tennessee, Alabama, Mississippi and Louisiana. Massachusetts also deserves mention as an early and not altogether happy experimenter with the Galveston idea.

The achievements of commission government

Like so many other reforms, the commission plan has proved a disappointment to both its early advocates and opponents. The fears of the latter that the plan would open the way to unhindered exploitation of the city by a handful of all-powerful commissioners, have been by no means justified by experience. Commission-governed cities have, on the whole, been remarkably free from the "graft" which too frequently characterized the old order in city government. Indeed, it may be safely asserted that the concentration of power and responsibility in a small commission did more to prevent corruption than the most elaborately conceived set of checks and balances could possibly do. On the other hand, the hope of its enthusiastic protagonists that commission government would usher in an era of business efficiency in the administration of cities has only been very partially realized. The commission plan made for more honest city government, better subject to popular control, to which improvements the initiative, referendum, recall, and non-

[1] Laws of 1913, Act 367. The third class includes all the considerable cities of the state except Philadelphia, Pittsburgh, and Scranton.

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partisan elections in most instances contributed an unassessable something. Its simple, board-of-directors-like procedure, as contrasted with the formal, time-wasting, oratory-encouraging methods of large city councils, was a powerful object-lesson to the American public. The commission dispelled the miasmas of pessimism in which municipal government had been hitherto wrapped. It caused the people to believe in the possibility of honest and efficient city government and pointed the way to its achievement. It was the occasion of a civic revival and, as it swept the country, it served to put the fear of God and a righteous, popular anger into the hearts of the politicians,—an impression which a decade of incomplete realization of its promises has not altogether effaced. So much can be said in praise of commission government. But at this point the discriminating critic must stop.

Failures of the commission plan: (1) confusion of functions of representation and administration

The fact that the plan has ceased to enlist new adherents, while an increasing number of its former followers are turning to other forms of government, is sufficient proof that it has not proved a thorough success. The fact is that it has most often failed to make use of the means of securing efficiency which science and experience have made available to the city administration. It has been slow to introduce good budgetary and accounting methods, better means of selecting the personnel of the administration, and business-like conduct of departmental business. It has had small place for the expert. In wiping the slate clean of the old "checks and balances," the commission plan performed a very valuable service. It went too far, however, in ignoring the fact that there is real occasion for a division of labor between the legislative and the executive. There is a fundamental distinction between the function of the one, which is representation, and the other, which is administration. This distinction is lost sight of in the elective dictatorship of the powerful mayor. But in that case the results are somewhat mitigated because the mayor is, after all,

primarily a representative and the actual performance of most administrative tasks passes to his subordinates. The distinction completely and well-nigh fatally disappears in the commission plan.

The qualities of representatives and administrators

Opposing principles apply to the selection of representatives and administrators. In the former we require a fair reflection of the average opinions and interests of the community, for it is their business to determine the policy of the government. The latter are called upon, however, to do no more than carry out the policy determined upon. We demand in them competence in the performance of their allotted task, a quality made up of professional training, experience and talent for administration. Representatives obviously must be chosen by popular election. It is a cardinal principle of our political faith that in no other way can faithful representation be secured. It is less generally understood, but none the less a fact, that good administrators are only an accidental product of popular election. The qualities which get votes are not the qualities of an administrator. Charm of manner, adeptness in forming political combinations, easy opinions, skill in public speech help get votes, but they tell very little of the candidate's ability to build bridges and sewers, direct a police department, or supervise the intricacies of municipal finance. In the commission form of government, the same small group of men are administrators and representatives. The result has been the very natural one: that the commissioners have, on the whole, been satisfactory representatives but scarcely passable administrators. They come, for the most part, from the same political class from which elective municipal officers have been drawn for a century. They are, on the whole, slightly higher examples of the politician type, but the type is the same. They conduct themselves somewhat better than their predecessors because the simplicity of the form of government leaves no shadows in which the

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corruptionist can safely work. They reflect with fair accuracy the ideals and aspirations of the mass of their fellow citizens. But as administrators, with few exceptions, they have been mere amateurs.

(2) No opportunity for experts

Not only have most commissioners been amateur administrators; they have been mediocre amateurs. The salaries paid in the larger cities have seldom exceeded $6,000, while in cities from 10,000 to 50,000 population they have usually ranged for $1,200 to $2,500. At the same time, the commissioners have usually been expected to give full time to the service of the city. Throw into the scale all the allowance that can be made for the "honor" of the position, and it is clear that the salaries are not large enough to attract business or professional men of real ability. Make the necessary deductions for the cost of getting elected, the chance of defeat, and the unpleasant personalities of a campaign, and the purchasing power of the commissioner's salary shrinks still further. It is no wonder, therefore, that commissioners, even in cities of moderate size, are more often than not incapable of effectively meeting their responsibilities as department heads. They stand at the opposite pole from the expert. Nor is there a place for the expert; for the salary of the head of the department is most frequently the maximum from which the other salaries decline.

(3) Absence of a single executive head

While our English contemporaries seem to get on very well in municipal government without a single executive head, all American experience points toward the necessity of such an authority. Swiftness of action and completeness of responsibility alike are best secured where one commands. Unless there is some one authority to which all branches of the city's service must answer, there can be no proper coördination of activities and no certainty of coöperation in the attainment of the ends of the administration. It is true that, in the theory of commission government, the commission is that authority. In practice, however, it has not been successful as a co-

ordinating agency. It has proved ordinarily to be a legislative, rather than an administrative, body, leaving the administration of the several departments almost altogether to the unregulated discretion of the individual commissioners. The reason is found in a common human trait, which crops out often enough in politics,—no commissioner will say anything about the conduct of another commissioner's department because he does not wish to encourage meddling in his own sphere of authority. In other words, he subscribes to the old saw, "Those who live in glass houses should not throw stones". Indeed, interference by the commission in departmental matters is very rare, except when the commissioners are already at loggerheads with one another; and then the interference is apt to be of a factious and disruptive sort, fatal to all administrative harmony.

Adaptability of the commission plan to large cities

One of the objections most frequently raised to the commission plan has been that the number of commissioners is too small to form an adequately representative body for a city of any considerable size. A corollary of this proposition is that the small number of commissioners does not allow a sufficient number of department heads to provide for the natural divisions of a large administrative organization. These objections might have been at least diminished in force by use, in the larger cities, of commissions of seven, nine, or even eleven members—any number, in fact, up to the point where the commission would cease to be a board of directors and become a debating society. In fact, however, the mystic figure five has been generally adhered to, and there can be no doubt that a council of five is not suitable to the representative needs of all cities, nor that cramming all the business of a great city into five departments may be contrary to sound principles of organization. Of the two difficulties, the latter is the most important. On the whole, commissions of five, elected at large, have proved more genuinely representative and more

subject to democratic control than larger councils, especially when elected by wards. The perfect council, of course, has not yet been devised. It is in the handling of complicated administrative problems that the commission plan breaks down, and to this end the artificiality of a five department organization undoubtedly contributes.

REFERENCES

There has been very little writing on the commission plan in recent years. The most extensive treatment of the subject is T. S. Chang, *History and Analysis of the Commission and City Manager Plans of Municipal Government* (1918). The most recent expression by a competent scholar is to be found in W. B. Munro, *Municipal Government and Administration* (1923), I, 396-415. See also the same author's "Ten Years of Commission Government," in *National Municipal Review*, I, 562-568 (October, 1912). Some very interesting material is contained in L. T. Beman, *Selected Articles on Current Problems in Municipal Government* (1923). See also W. P. Capes, *The Modern City and Its Government* (1922), and Massachusetts Constitutional Convention, Bulletin No. 12 (1918).

Among the older publications, the most important is C. A. Beard, *Loose Leaf Digest of Short Ballot Charters* (1911 *et seq.*), which contains several important charters in full, with digests of many others. Other references are: *Commission Government in American Cities*, in Annals of the American Academy of Political and Social Science, XXXVIII, No. 3 (1911); E. S. Bradford, *Commission Government in American Cities* (1911); F. H. MacGregor, *City Government by Commission* (1911); C. R. Woodruff (editor), *City Government by Commission* (1911).

A very critical study of the results of commission government is contained in Henry Bruère, *The New City Government* (1912), which was based on a survey of ten commission-governed cities. In 1916 the U. S. Census Bureau issued a volume entitled *Comparative Financial Statistics of Cities under Council and Commission Government.*

The important portions of the New Orleans charter of 1870, the Tennessee act of 1879, the Galveston charter, the Iowa act of 1907, the Fort Worth charter of 1909, and the Organic act of the District of Columbia of 1878, and significant extracts from other charters, will be found in Reed and Webbink, *Documents.*

CHAPTER XIII

THE MANAGER PLAN

Manager and commission plans contrasted

IT is fair to say that the manager plan is an outgrowth of commission government. The director-like commission, with its emphasis on business methods in municipal affairs, inevitably suggested the completion of the analogy between city and business organization. The chief defects of the commission system were found to center about the absence of a distinct executive authority, and the obvious remedy was to add to the board of directors, or commission, a manager, selected by them because of his professional qualifications, to perform their executive functions. The addition of a few brief clauses to a charter were sufficient to effect the change. So close is the connection between the commission and manager plans that the latter has frequently been called the "commission-manager" plan.[1] Indeed, the framers of the early manager charters felt that they were proposing, not a new form of government, but merely commission government with improvements.

Nature of the manager plan

Nevertheless, the two plans really represent divergent theories of governmental organization. Not infrequently in state and national, as in local, government resort is had to the commission principle; that is, powers are entrusted to a body to be carried out directly by the body or its members. Even more commonly employed, however, is a form of organization in which the powers possessed by the body are carried out by an executive officer appointed by and responsible to it. This is the essential characteristic of the manager plan. Such a plan

[1] The City Managers Association has gone on record as favoring the term "council-manager."

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is usually employed in the private corporation—the stockholders choose directors, the directors select a manager, the directors settling questions of policy and the manager carrying out the decisions. The circumstance that the manager may have recommended the policy to the board does not at all diminish the fact that the board adopts the policy and is responsible to the stockholders for its success or failure. Very similar is the organization of the city school district, with its board of education and superintendent, or the state university with its board of regents and president. The only novelty about the manager plan is its application to the general purposes of city government. The people elect a council—it is often called a commission", but it displays none of the characteristics of one, for its members never act as heads of departments or exercise other special administrative powers. The council appoints and removes the manager. The council determines what shall be done and the manager sees to the doing of it. The one attends strictly to the business of popular representation, the other to that of administration. There is no separation of powers in the old check-and-balance sense, for the council's will is supreme; but there is a division of labor, a differentiation of function between legislative and executive, which had been wholly and unprofitably lost in the commission system. The manager plan is as distinct from the commission plan as is the English cabinet system from the independent executive government of the United States.

The city manager not the counterpart of the German burgomaster

It has often been suggested that the city manager is modeled on the German burgomaster. This idea, however, is not well founded. His ancestor is rather the American corporation executive. Arguments from German experience, in the early days of the manager movement, helped to win friends to the plan, but, in his legal position no less than in his origin, the manager is strictly

an American product. Burgomaster and manager are both professional officers occupying the place of chief prominence in their respective cities. Here, however, the likeness ends. The burgomaster is always what, with only three or four exceptions, managers never are; namely, the official and honorary head of the city government;[1] while the manager possesses what the burgomaster must share with his fellow members of the *magistrat;* namely, complete executive control of all the principal branches of municipal administration. Historically and legally, the manager's powers are those of the mayor, as most broadly conceived.

Origin of the manager plan

Who first suggested the idea of a city manager, no one now knows. The first city to install a manager was Staunton, Virginia. A movement for the adoption of the commission plan in that municipality met the insuperable obstacle that the existing form of government—a mayor and two-chamber council—was fixed by the constitution of the state. Though the city could not change its form of government, it clearly did possess the power to create additional officers. The council, therefore, by ordinance dated January 13, 1908, established the position of general manager, who was given "entire charge and control of all the executive work of the city in its various departments" and "of the heads of departments and employees of the city", and was given also general powers to "perform all the administrative and executive work now performed by the standing committees of the council except the finance, ordinance, school and auditing

[1] R. T. Crane, *Digest of City Manager Charters,* notes four cities: San José, Cal., and Hickory, High Point, and Morganton, N. C., which speak of the city manager as the official head of the city. The author of the present volume drafted the charter of San José. The above feature was embodied because of the Charter Committee's cordial reception of a suggestion by Col. S. S. McClure, made in a public meeting, that the manager be given the honors as well as the labors of the chief executive. It was the author's fortune later to be manager of San José, and he can testify strongly to the disadvantage of loading the manager with many ceremonial appearances which absorb his time and distract his attention from his work, and which might better be made by the president of the council.

committees".[1] The success of this experiment was considerable [2] and, although only meager reports of it were immediately forthcoming, it had a distinct influence on other cities, which were at that time contemplating charter changes.[3] In 1909 the territorial legislature of New Mexico enacted a law [4] which offered cities two alternatives; namely, commission government of the usual pattern and a form in which the council was to appoint a "superintendent of city affairs", whose duties were defined in largely the same terms as those applied to a city manager. So far as can be learned, no New Mexico city ever took advantage of this opportunity. The Board of Trade of Lockport presented to the 1911 session of the New York legislature a proposal for an optional form of government for third-class cities (less than 50,000 population). It provided for the appointment by the council of a city manager to serve during its pleasure and to be the administrative head of the city. The mayor, who was to be the councilmanic candidate receiving the largest popular vote, was reduced to the position of presiding officer of the council and official head of the city. The manager was to carry out the decisions of the council, and was also to attend all its meetings and make recommendations for its action. The general power of appointment was conferred upon him, subject to confirmation by the council, and no appointee of his could be removed except with his consent. There is strong reason for believing that the Lockport Board of Trade

[1] The first manager appointed under this ordinance was Charles E. Ashburner, subsequently city manager of Springfield, O., Norfolk, Va., and Stockton, Cal.

[2] See E. S. Bradford, *Commission Government in American Cities* (1911), 119-124; John Crosby, "Municipal Government Administered by a General Manager—The Staunton Plan," *Annals of American Academy of Political and Social Science*, XXXVIII, 877-883; and C. E. Ashburner, "Sixteen Years in the City Manager Profession," *Tenth Year Book, City Managers Association* (1924), 18-22.

[3] Since 1920 Staunton has been governed under the optional city manager act, applicable to cities under 100,000.

[4] Laws of 1909, Chap. 87, Sec. 10, which provides for the "superintendent of city affairs," is set forth in C. A. Beard, *Digest of Short Ballot Charters*.

thought it was proposing simply an improved commission charter, the main ideas of which had been suggested by the National Short Ballot Organization.[1] The New York Legislature defeated the proposal, but the "Lockport plan" was widely advertised and became the basic model for all future manager charters. The first city to be actually granted such a charter was Sumter, South Carolina, which received it in the form of a special act of legislature in 1912. The council elected under it proceeded to advertise for a manager; and the novelty of the procedure put the little city of 8,000 inhabitants in headlines. The following winter, Hickory and Morganton, North Carolina, followed the lead of Sumter.

The Dayton charter, 1913

In the meantime, immediately following the adoption of the home rule amendment to the Ohio constitution, in September, 1912, the Chamber of Commerce of Dayton[2] had appointed a committee of five under the chairmanship of John H. Patterson, president of the National Cash Register Company, to initiate a new charter movement. This committee gave serious consideration to three general types of municipal government: (1) what it called the "federal" plan, or, more properly, the mayor and council plan, with the mayor in a position of great power; (2) the commission plan; and (3) the manager plan. It reported in favor of the last. A committee of one hundred was set up and its campaign, only momentarily interrupted by the flood of May 20, 1913, culminated in the election of a charter commission pledged to the manager form of government. The charter was adopted by the people on August 12, 1913, and went into effect on January 1, 1914. This date may be taken as the real beginning of the city manager movement. The flood had put Dayton in the limelight. Proud of his handiwork, John H. Patterson used the methods,

[1] Unpublished address of R. S. Childs before the City Managers Association, Washington, D. C., November 14, 1923.

[2] C. E. Rightor, *The City Manager Plan in Dayton*, describes in detail the city manager movement in that city.

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and even the organization, of the National Cash Register Company to spread the news of Dayton's achievement. Furthermore, the Dayton charter was brief, well-drafted, and included not only the city manager plan itself, strengthened by absolute power of appointment and removal, but every modern device for securing popular control of government together with admirable budgetary, financial, and civil service provisions. It was in fact a summation of the best thought of the day with regard to city government. The manager selected to inaugurate the plan in Dayton, Henry M. Waite, proved to have all the qualities a manager should have. His administration was brilliantly successful and its reputation quickly covered the country. It need not be wondered at, therefore, that the Dayton charter was widely and almost slavishly copied by many other cities. It may still be regarded as in most respects a "model" charter. The only serious criticism to be directed at it as an example of its type is that it applies the recall to the manager—a violation of the theory of the manager's relation to the council. The city manager plan does not contemplate direct responsibility to the people on the part of the manager, but a mediate responsibility through the council.

The spread of the manager plan

The subsequent spread of the manager plan has been very rapid, and down to the end of 1923 increasingly so. No absolutely accurate list of city manager cities has ever been prepared, for the same reasons which we noted in the case of commission government. Professor Crane [1] estimated the number of charters in effect at the close of 1922 as 202, of which he had actually digested 167. In at least a third as many more cities, the plan was on that date in force by ordinance. The City Managers Association [2] figures show about 331 cities in the United States with city managers by charter or

[1] *Digest of City Manager Charters.*
[2] *City Manager Magazine,* VII, 195 (March, 1925).

ordinance on March 1, 1925. Only four cities, all in 1923 and 1924, have abandoned a city manager charter once adopted,[1] and in none of these cases can the facts be reasonably construed into a popular repudiation of the plan. Like the commission form of government, the manager idea has appealed most strongly to the smaller cities. Cleveland, Cincinnati, Kansas City, Missouri, and Rochester, New York, are at this writing the largest cities to adopt the manager plan, while Norfolk, Va., Dayton, O., and Grand Rapids, Mich., are the only other cities of over 100,000 in which manager charters now are in force. More than a third of the city manager cities have less than 5,000, and less than a sixth have more than 20,000 people.

Its territorial distribution

The territorial distribution of manager cities is curious and interesting. Nearly half of the manager cities are in the five states of Michigan (36), California (31), Texas (28), Florida (25), and Virginia (23).[2] The city manager cities lie for the most part in four territorial groups: (1) the South Atlantic states, from Virginia to Florida (74); (2) Ohio and Michigan, together with portions of Indiana, Illinois, and Wisconsin, bordering on Lake Michigan (59); (3) the southwestern states of Kansas, Oklahoma, and Texas (57); and (4) California (31).

Essentials of the manager plan

It would be unprofitable for us here to enter into a discussion of the variations in the manager plan. The council commonly consists of from three to seven members, five being the favorite number, nominated and elected at large on a non-partisan ballot. Several cities have made use of preferential voting, and six: Ashtabula, Kalamazoo,[3] Sacramento, Boulder, Cleveland, and Cincinnati, have tried proportional representation. The

[1] Waltham, Mass.; Lawton, Oklahoma; Akron, Ohio; Nashville, Tenn.

[2] In the first three of the states home rule exists by constitutional enactment. In Florida it has been established by legislative act. Virginia offers a very acceptable optional act providing the manager plan.

[3] Held unconstitutional. See Chap. XV.

mayor is almost everywhere no more than the presiding officer of the council, and the ceremonial head of the city, although it is not uncommon for him to be given special powers with regard to the preservation of order in time of public emergency. In all but a very few cities the manager is appointed to hold office at the pleasure of the council. This is so uniformly the case that it may be said to mark the normal relationship of manager and council. Usually the manager need not be a citizen of the city or state in question at the time of his appointment. Sometimes it is so specified in the charter, but more frequently the same result is achieved by the simple omission of any residence requirement. This opening of the managership to out-of-town candidates has had a great deal to do with its progress toward a genuine professional status. His powers to direct, appoint, and remove heads of departments and other employees of the city are most often extensive and unrestrained except by his general responsibility to the council. Some charters, notably that of Cleveland, go so far as to forbid members of the council to exercise any influence on the manager in the matter of appointments. In almost every manager city, however, a few officers continue to be elected by the people or appointed by the council. This may be harmless enough when applied to the popular election of an auditor or the council's choice of the city clerk. When it extends to the filling of offices directly connected with the principal administrative departments, it vitiates the most essential characteristic of the plan itself, which is the complete responsibility of the manager for the conduct of the administration.[1] The manager is almost invariably charged with the duty of keeping the council informed of the needs of the city and of recommending measures for it to adopt. He is generally required to attend all council meetings and permitted to take part in

[1] For the relation of the city manager to the civil service commission, see Chap. XVII.

the discussion of all matters coming before that body, but without the right to vote.

The merits of the manager plan

The chief reasons for the rapid spread of the manager plan have been, (1) past misgovernment, and (2) the promise of the manager plan to meet specifically the evils apparent in preëxisting systems. The argument most frequently and vigorously urged on its behalf is that the distinction which it draws between the functions of representation and administration makes it possible to put the actual conduct of the city's business in the hands of a qualified expert. Neither an elected mayor nor elected commissioners can often qualify as such. The process of election suffices for the choice of representatives, but centuries of experiment have demonstrated its futility as a means of selecting administrative skill. The city manager plan, further, concentrates executive power in the hands of a single individual. All American experience points to a single executive head as the inevitable condition of administrative efficiency. In no other way do we seem able to secure harmony and coördination in all the branches of administration. With the concentration of power goes a concentration of responsibility which leaves little uncertainty in the award of praise or blame. These merits, of course, are shared with the powerful mayor type of government, but the responsibility of the manager is much more effectively and continuously enforced than that of any mayor. The manager's responsibility runs to the council, before which he must appear at frequent intervals (usually as often as once a week) to explain and justify his program. It is the sworn duty and chief business of the councilmen to scrutinize his activities. The mayor's responsibility is to the people at large, among whom "everybody's business" has regularly proved "nobody's business", and who, when their interest is excited by some dramatic happening, give judgment, not on the basis of reason, but of sentiment. It is enforceable only

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at long intervals of two or four years, during which much, of both good and evil, may be forgotten. The mayorship has become, in many cities, a species of dictatorship—founded on popular approval, it is true, but periodic approval. There is no reason to be surprised that many minds, holding that no man is fit to rule alone, revolt from this situation toward the "controlled executive" or manager forms.

Defects of the manager plan

Against this strong case, the opponents of the plan have been able to allege the rather fanciful dangers of executive usurpation on the part of an officer so far removed from the people as a manager, and the shortcomings of the plan in practice, upon which subject there is a plentiful lack of definite evidence. There is, in fact, but one well-feathered arrow in the quiver of the opposition, *i.e.*, the general failure of councils to represent the people and the consequent dependence on an elected executive, through whose choice the people may exercise a real influence on municipal politics. If, it is argued, by abolishing the elective mayorship, you deprive the people of their only representative, you destroy at a stroke the most effective means of democratic control in city government. There is so much force in this contention that some friends of the manager plan have tried to work out a method of coupling a representative mayor and a professional administrative manager in the same government. It is obvious that, whatever else such a government might be, it would not be the manager plan as described in this chapter. It is highly probable that such dualism would result, if the manager were not completely subordinated to the mayor, only in destructive friction. Some advocates of the manager plan have been hopeful of its restoring the representative character of the council in small cities, but have despaired of it for great cities. The plan has been extensively tried out and found to work well from the point of view of popular control in cities of moderate size. That it will do the

same in large cities has not yet been sufficiently demonstrated. In large cities, the problem of democratic control, under any plan of government, is much more difficult than in small ones. The former are keenly faced with the quandary of ward-elected councils, which do not represent the whole city, and at-large-elected councils, which do not represent the parts. The friends of the manager plan are inclined to believe in the efficacy of proportional representation to make the council truly representative. Here again there is, as yet, no convincing body of evidence based on the experience of our large cities.

Has the manager plan proved a success?

On the whole, it may safely be said that the greater number of good talking points are on the side of the city manager plan. This does not necessarily mean, however, that the plan has really given better results than the earlier forms of municipal government. The admitted improvement of municipal government in the last four decades has been, as we have seen, the result of numerous causes and has presented some of its most striking manifestations quite independently of the manager plan. The examination of the published reports of numerous cities has demonstrated the futility of trying to measure the relative efficiency of the various forms of city government by this means. The factors determinative of the cost and quality of the operations of a city government are so numerous and so difficult to isolate that no one can say how much the single factor, "form of government", contributes in any instance. If, for example, the tax rate in A has risen thirty percent under the manager plan, adopted in 1918, over what it was under the mayor and council plan which preceded it, how much of this increase was due to the changed form of government and how much to the general rise in prices which followed our entry into the world war? No one can tell. Only one conclusion of reasonable certainty can be reached from these reports; namely, that the man-

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ager plan has carried sound financial practices, modern accounting methods, a real budget and business-like purchasing into many of even the smaller cities. The unfavorable comparison on these grounds, which Bruère [1] drew ten years ago between the commission-governed cities and the great centers of population, could not be sustained against the manager cities. Not only do they seem to make a practice of avoiding deficits and their attendant floating debts by planning their expenditures to balance with their revenues, but they buy intelligently and record their financial transactions in accordance with standard forms.

The manager plan approved by most students of city government

If there can be no definite proof of the superiority of the manager plan, from the record of its achievements, there has been no hesitation on the part of most students of municipal government in commending it. That it has, on the whole, given satisfaction to the people of the cities in which it has been tried is certain. Only four cities have given up manager charters, and in none of them was there a decisive popular expression against the manager principle. "Labor," which has occasionally viewed the newly adopted plan with suspicion, has usually been converted to it in practice. The marked and continued hostility of the politicians may be regarded as a tribute to the integrity of manager administration. The National Municipal League, the most influential organization in the field of municipal reform, has made the manager plan an integral part of the "Model Charter", which it recommends to the cities of the country. The theory of the manager plan has been at least partially tested in several other fields, for example, school administration, institutional management and private business. We have proceeded toward the good form of municipal government by trial and error. In our one hundred and fifty years of national existence, we have experimented with several forms of city government, only to arrive by a

[1] Henry Bruère, *The New City Government, passim.*

process of elimination at the city manager plan. The improved financial methods it has introduced are the accepted faith of all municipal experts. It is hard, therefore, to avoid concluding that the plan on the whole has helped to produce the good and to better the bad. Faith in the manager plan awaits complete demonstration, but it is reasonably supported by the facts as we know them.

Development of the managership

More light can in fact be thrown on the probable future of the manager plan by a study of the development of the managership than by any attempt to compare the reports of manager and non-manager cities. In this development, two crucial points appear: (1) the ability of the managership to attract the right kind of men, and (2) the possibility of establishing a satisfactory relation between manager and council. In theory the office of manager should be well paid, and should offer such a reasonable assurance of permanency as to attract men of talent and technical attainments. From the very beginning, the hope was expressed by the advocates of the plan that, with the establishment of the managership as a non-political position not confined to residents of the locality, there would grow up a managerial profession whose members might look forward to promotion from one city to another, and for which young men might be trained as they now are for other professions. There has as yet been time only for a very imperfect realization of these ideals, but the tendency, on the whole, has been steadily in the right direction.

Managerial salaries

The salaries provided for city managers have, relatively speaking, been high—considerably higher than those paid to mayors in cities of the same class. The city manager of Cleveland receives the same salary as the mayor of New York, $25,000 a year, while the mayor of Detroit, the city most comparable to Cleveland, receives only $15,000. Whether or not managerial salaries have been adequate is another question, but to be answered, with some hesitation, in the affirmative.

SALARIES OF CITY MANAGERS IN VARIOUS CLASSES OF CITIES[1]

	No. of Cities	Highest Salary	Lowest Salary	Median	Average
100,000	4	$25,000	$8,000	$11,700	$14,110
50,000-100,000	13	15,000	5,000	8,500	9,053
20,000- 50,000	34	20,000	4,500	6,000	7,323
10,000- 20,000	42	10,000	3,000	4,600	4,812
5,000- 10,000	77	12,000	1,700	3,600	3,916
5,000	110	7,500	1,200	2,570	2,891

The accompanying table shows wide variation between the maximum and minimum salaries paid in cities of each population group. The maximum salaries are conspicuously liberal as government salaries go in the United States. Even the minimum salaries of the larger cities have proved, in general, sufficient to attract managers of ability and experience commensurate with the problems they must face. Only eight cities of more than 10,000 inhabitants pay their managers less than $4,000 a year. In some of the very small cities, it is true, the manager's salary falls hopelessly below the level of decent compensation in the professions, such as engineering, with which the managership may be properly compared. But it must be remembered that even the small city managership is often attractive to very capable beginners as an opportunity to acquire experience and reputation.

Tenure of city manager

As every one knows, however, good salaries are but one element in the problem of employment. A successful manager must combine numerous qualities of a high order—honesty, courage, tact, executive ability, coupled with knowledge of the technique of municipal administration and appreciation of the true objectives of good municipal government. He need not be a "superman", but he must have a well-balanced character and a keen and informed mind. His possession of the requisite qualities in proper proportion can fully be determined

[1] Compiled from *Tenth Year Book (1924) of the City Managers Association.* The very few cities where the manager gives less than full time and those in which the managership is vacant have been omitted.

only by trial on the job. There was, in the beginning, no class of persons whose professional reputation could furnish to city councils satisfactory assurance of probable success in the managership. Many councils sought their managers in the engineering profession, in the belief that an engineer's experience furnished the best available training for the managership. It should not be surprising, however, that councils frequently chose badly, nor that many persons who were attracted by the new position soon discovered themselves to be temperamentally or otherwise unfit for it. Of course, under such circumstances, the tenure of managers as a class could scarcely be expected to be secure. Their average term to March 1, 1925, had been about two and a half years.[1] The figures supplied by the City Managers Association show that, up to that date, something less than three hundred cities had employed 681 managers. Thirty-four of these had served more than a single city, having held among them an aggregate of eighty-five positions. From these figures, we may safely conclude that for every two persons who have taken up the calling one has more or less willingly abandoned it.

The manager and politics

Nor has there been that freedom from political influences to which the advocates of the manager plan aspired. It is impossible exactly to estimate the effect of "partisan politics" on the appointment and removal of managers, but undoubtedly it has often been decisive. A striking example may be found in the choice of the first manager in Kansas City in which the members of the minority party in the council refused to participate on the ground that the majority had actually selected the manager without consulting them. In nearly three-quarters of the manager cities the council is elected on a non-partisan ballot. But, while this device has been

[1] These figures are based on the directory of city manager cities appearing in the *City Managers Magazine*, VII, 196 *et seq.*, March, 1925. The lists of manager cities, etc., contained therein are admittedly imperfect, but are sufficiently accurate to sustain the conclusions of the text.

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rather successful, especially in the west, in keeping the national party machines out of municipal elections, it has not abolished politics. Indeed, where the party organizations have been strong, as in Cleveland, Kansas City, and other cities, they have been able to triumph in spite of the non-partisan system. Party control is, however, by no means synonymous with bad city government. The first city manager of Cleveland, for example, was appointed as a party man by a partisan majority in the council, with results which have been productive of general satisfaction. It must be remembered, too, that national party organizations appear actively in the politics of the best governed cities of Europe. Of even more importance, but still more elusive of determination, is the degree to which the manager's appointment and subsequent conduct of the administration has been influenced by what we may call "personal politics". Scarcely a suspicion of actual corruption in office has attached to any manager. There have, however, been instances of truckling to powerful interests, subserviency to politicians, and demagogic playing to the galleries. It is difficult to draw the line between such regrettable practices and a reasonable discretion in dealing with the powers that be or legitimate appeals to public sentiment. It is probably fair to say that, except in a few cities, managers have been almost as independent of political influences as they could have been without seriously risking their positions. On the other hand, the extent to which managers have got and kept their jobs by politics has been a serious obstacle to the development of city managerships into one of the recognized professions.

Tendency toward security of tenure

There is, however, substantial evidence of marked progress toward genuine professional standards. In the matter of tenure of office, the average length of service in the city of their incumbency of 278 managers in serv-

ice March 1, 1925, was 2.95 years, as contrasted with 2.44 years for all managers from the beginning. The accompanying table brings out very forcibly the increasing tendency to stability in office.

LENGTH OF SERVICE OF CITY MANAGERS IN CITY OF INCUMBENCY[1]

	July 1, 1920	*March 1, 1925*
Less than one year	62	36
One to two	44	74
Two to three	31	55
Three to four	9	42
Four to five	5	24
Five to six	0	21
Six to seven	4	15
Seven to eight	0	6
Eight to nine	1	4
Nine to ten	1	0
Ten to eleven	0	0
Eleven to twelve	0	1
Twelve to thirteen	0	0
	157	278

Equally impressive is the increasing number of managers who have been promoted from one city to another. The first city manager has, with one brief interval, been an active member of the profession since 1908, and is now serving his fourth city. Another of the early managers is now serving his fifth city. Of 280 managers whose records appear in the 1925 column of the following table, thirty-four reached their positions by promotion from another city, and five were serving a second time in their original city. In 1920 only thirteen were holding their positions by promotion. A comparison of the length of service of managers in 1920 and 1924 shows the improvement in the managers' status. In the former year but 17.3 percent had served more than three years, in the latter 47.5 percent.

[1] This and the succeeding table are based on *Sixth Year Book of the City Managers Association* and *City Managers Magazine*, VII, No. 3 (March, 1925), and include all the managers in office on July 1, 1920, and March 1, 1925, with regard to whom the requisite information is furnished in the above publications.

LENGTH OF SERVICE AS CITY MANAGERS OF MANAGERS IN OFFICE

Years of Service	*July 1, 1920*	*March 1, 1925*
1	54	29
1- 2	43	67
2- 3	32	51
3- 4	9	43
4- 5	5	26
5- 6	3	23
6- 7	7	20
7- 8	1	10
8- 9	1	4
9-10	2	1
10-11	..	1
11-12	..	4
12-13	..	0
13-14	..	1
	157	280[1]

Evidence of professional spirit

At the same time, there is accumulating evidence of the development of a professional spirit among managers themselves. A City Managers Association was formed in 1914 with seventeen charter members. It has held a convention each year since that time and has become a vigorous organization with a paid secretariat, a year-book, and a monthly magazine. To one who has attended these conventions for several years, there is evident a progressive improvement in the number and character of members attending and in the quality of the discussions provided by the members. The band of agents for municipal supply houses which usually infests meetings of city officials is now noticeable by its absence. There was a tendency on the part of the early managers to consider themselves no more than a minor branch of the great engineering profession. This has almost entirely disappeared. At the 1924 meeting, a code of ethics defining the proper attitude of the manager in the difficult relations he sustains with the council and the public was adopted.

A further proof of the development of professional

[1] Two managers are added to this table who were not considered in the preceding table because they took office on March 1, 1925. Mention should likewise be made of five managers who have served two terms in the same city, but whose previous terms are not considered in this table.

spirit is the increasing interest which is being taken in training for the profession. This subject has occupied a prominent place on recent convention programs. It was formerly taken for granted by most observers of the manager movement that an engineering course, together with some practical experience in handling men, was an entirely adequate preparation for the managership.[1] When they thought about the matter at all, managers, even when not themselves engineers (as nearly half of them, including some of the most successful, have not been), almost always stressed the value of an engineering training. It has now become apparent that city managing is something more than "engineering", unless we are to include in that term what is sometimes called "human engineering". Finance, police, recreation, health are but a few of the functions of the city which fall outside the normal training and experience of the engineer. Even the possession of that indefinable quality, executive ability, which all are prepared to admit is the first essential of managerial success, is not enough without some knowledge of the true objectives of municipal government. This leads inevitably to the conclusion that the ideal academic training for the city manager should be broader than the traditional engineering curriculum. On the other hand, it must be conceded at once that a knowledge of engineering is a valuable asset for the city manager—an almost essential one in those small cities where it is financially impracticable to employ both a competent manager and a competent engineer. The training of every manager should, therefore, include some of the elements of engineering, although it is scarcely necessary that a manager be able to design bridges, sewage disposal plants, or other large public works. In the small city outside experts should be called in when such structures are to be erected. In the larger

[1] See Joseph Cohen, "City Managership as a Profession," *National Municipal Review*, XIII, 391-411 (July, 1924, Supplement).

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cities the wise manager leaves such matters to his engineering department.

University courses in municipal administration

These principles have been fully recognized in formulating the course of study in municipal administration at the University of Michigan, which pioneered in this field of instruction. Engineering students desirous of becoming city managers are encouraged to take a graduate year of work, in which they study municipal administration, public finance, accounting, and city-planning. On the other hand, graduates from the academic departments are given, besides courses specifically in the field of municipal administration, courses in highway construction, sanitary engineering, etc. These latter are senior courses in the engineering college, largely descriptive in their nature, in which students of municipal administration may be excused from working the problems which require the use of higher mathematics. Before a student can receive the degree of M.A. in Municipal Administration, he must also have had at least three months' practical experience in a city office or bureau of municipal research. Several other universities are now offering similar opportunities for training for municipal service, notably Syracuse and Kansas. Mention also should be made of the National Institute of Public Administration (formerly the New York Bureau of Municipal Research) which for many years maintained a training school in the field of Public Administration. The methods of this "training school" differed from those of the universities in giving academic training and practical work simultaneously. Numerous managerships and other municipal positions are now held by those who have completed one or the other of these courses. There is an increasing willingness on the part of city managers to make room in their working force for "apprentices" who have completed their academic training.

The key to the success of the manager plan lies in the relation of the manager and council. His relations with

Relation of manager and council: (1) in theory

his administrative subordinates are not essentially unlike those of an elective mayor. If anything, the manager, because he does not have to court the favor of the electorate and build a political machine, is in a position to act with a more discriminating and decisive authority. We have seen that the general relation of council and manager is not a novelty in American experience. This experience, however, has been mostly in private enterprise or in those fields of government, such as the management of schools and libraries, from which by general consent it is easiest to exclude the influence of politics. The tradition that the city is a fair field for political activity is strong. It need not be surprising, therefore, that councilmen frequently and city managers too often conceive of themselves as political characters, and apply to their relationship the ideas of so-called practical politics. The theory of the situation is clear enough. It is the duty of the council to represent the people in selecting a manager and determining the general policies of the city. A corollary to this is their duty to sustain complete responsibility before the people for the policies and conduct of the city government. The details of administration, including the control of personnel, belong exclusively to the manager, subject to his responsibility to the council. When the council is no longer willing to trust these matters to the manager, it is time for a new manager. The manager also is expected to keep the council informed as to the needs of the city and to recommend measures for its adoption. For these purposes he is required to attend meetings of the council and is given the right to participate, without a vote, in its deliberations. The *agenda* of council business normally should be largely prepared by the manager. His intimate knowledge of the requirements of every branch of the city service entitles his recommendations to respect. Their constant rejection should be notice to him that he has lost the confidence of the council and that his resigna-

tion is in order. On the other hand, when the council has adopted a policy—whether or not in accordance with the manager's views—it alone is answerable to the public. As long as he remains in office, the manager must loyally carry out the measures of the council.

The managers' conception of their duty in this relationship is specifically set forth in the code of ethics adopted by the City Managers Association in 1924,[1] as follows:

"Loyalty to his employment recognizes that it is the council, the elected representatives of the people, who primarily determine the municipal policies, and are entitled to the credit for their fulfillment.

"Although he is a hired employee of the council, he is hired for a purpose—to exercise his own judgment as an executive in accomplishing the policies formulated by the council, and to attain success in his employment, he must decline to submit to dictation in matters for which the responsibility is solely his.

"Power justifies responsibility, and responsibility demands power, and a city manager who becomes impotent to inspire support should resign.

"A city manager should deal frankly with the council as a unit and not secretly with its individual members, and similarly, should foster a spirit of coöperation between all employees of the city's organization.

"No city manager should take an active part in politics."

Under this ideal relationship, the city secures the benefit of a unified executive authority in the hands of a person selected because of his qualifications for the office and constantly responsible to the representatives of the people. All this is in favorable contrast with the diffused executive authority of the commission plan, the irresponsibility, except at distant election periods, of the elective mayor, and the amateurism in administration

[1] *City Managers Magazine*, VI, No. 10 (October, 1924).

which popular election makes almost inevitable in both mayors and commissioners. The manager has, with much reason, been called a "controlled executive", as contrasted with that species of elective dictatorship which the tendency to increase the powers of the mayor has brought to pass in many of our cities. The function of the council is at once dignified and simplified—dignified by its control of the executive and simplified by reason of the fact that its business is prepared for it by a qualified expert. Two days a week is all the time required by council service, even in the largest cities, and in those of moderate size an evening or two weekly suffices. As a result, busy and successful men may find a councilman's job at once worthwhile and possible.

(2) In practice

Needless to say, the ideals of the council-manager relation are not uniformly sustained. Some managers have been disposed to use their position in the city government to develop political leadership in the community. For this departure from principle, the tendency of the people to ignore everything but the nominal head of the administration is in part to blame. The city manager plan has not altogether restored the dignity of the council because the press and the public persist in regarding the manager as the real ruler of the city. There is a great temptation for an able, aggressive, well-informed manager, forced into prominence almost against his will, to take the lead in securing popular adherence to the policies of the city government. Under such circumstances, the council becomes a mere adjunct to the manager. He who lives by the sword may perish by the sword, and the manager who thus usurps the political functions of the council is almost sure eventually to arouse antagonisms which will bring his career to an untimely end. Some managers, while keeping strictly within the limits of their duty, have failed to yield deference to the views of their councils, such as is essential to cordial coöperation. It is easy to see how

an engineer, unused to a political atmosphere and accustomed to command, might fall into this error. Happily, neither of these classes of managers has proved numerous. A much more serious danger is the disposition of the council to subordinate the manager and to assume, either as a body or as individuals, the detailed direction of the city's business. This occasionally goes so far as to reduce the manager to a mere messenger boy for the councilmen. But more frequently, and almost as disastrously, it amounts only to an intermittent and vexatious interference with the manager's functions whenever the exigencies of petty politics invite it. Of course, an able and high-spirited manager, finding it difficult to endure such dictation, resigns or is dismissed. Professor Munro says:[1] "The most common ground for dismissal has been inability to work harmoniously with the commission." It may with propriety be added that the most common cause of such lack of harmony has been the council's encroachment on the manager's functions. The place then often goes to a local politician who is ready to play at give and take with the council, or to a professional man of inferior attainments to whom a job on any conditions is attractive. In either event, the interests of the city suffer through the incapacity of the manager, which the continued interference of the council renders more pronounced. Charter provisions prohibiting members of the council from importuning the manager for jobs for their friends and other favors are not sufficient to uproot this evil. It is founded in the conception of municipal government as a political game, of which office is one of the prizes. This idea likewise underlies that popular demand for a local man, under cover of which the council sometimes seeks a pliant man as manager. The conclusion is obvious,—that the city manager plan, like every other scheme of government, will not automatically produce good works,

[1] W. B. Munro, *Municipal Government and Administration*, I, 431.

but must depend for its success upon the character of those entrusted with operating it. As in the case of all democratic institutions, the burden of responsibility rests ultimately on the electorate.

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Most of the literature on the city manager plan is of the propagandist order and must be read with caution. R. T. Crane, *Digest of City Manager Charters* (1922), is the only attempt at a scientific collection of facts relating to the legal status of the plan. W. B. Munro, *Municipal Government and Administration,* I, 416-435, very fairly presents the case for and against the plan. T. S. Chang, *History and Analysis of the Commission and City Manager Plans* (1918), contains a lengthy treatment of the plan in general. Its critical value, however, is open to question. Massachusetts Constitutional Convention, Bulletin No. 13 (1918), contains an excellent summary of the subject. C. E. Rightor, *The City Manager Plan in Dayton* (1919), is an excellent account of the working of the plan in that city. The Cleveland Year Book (1925), 23-62, contains an interesting estimate of the results of the plan in the largest city which has yet adopted it. Joseph Cohen, "The City Managership as a Profession," *National Municipal Review,* XIII, 391-411 (July, 1924, published as a supplement), and R. S. Wallis, "The Trend of City Managers' Salaries," *City Managers Magazine,* VII, No. 3, 51-53 (March, 1925), present worthwhile studies of the tenure and compensation of city managers. The City Managers Association of Lawrence, Kansas, publishes a monthly periodical, the *City Managers Magazine,* including a large "annual number", which contains a great deal of current information. The Year Books of the Association (1914-1924) also contain invaluable data on the progress of the plan. The National Municipal League's *Model City Charter* has been the basis of action of many charter commissions. The League (to be addressed at 261 Broadway, N. Y.) also has published a number of pamphlets on the subject. The *National Municipal Review* is perhaps the best means of keeping in touch with the current aspects of the movement.

The Staunton ordinance of 1908, extracts from the proposed charter of Lockport, the charter of Dayton (1913), the charter of Cleveland (1923), and the full text of the *Code of Ethics of the City Managers Association* will be found in Reed and Webbink, *Documents.*

CHAPTER XIV

REFORM IN NOMINATING AND ELECTING MACHINERY

Primaries and elections a matter of general rather than municipal interest

MUNICIPAL government has profited greatly from the general movement for ballot and primary reform which synchronizes almost exactly with the era of municipal reform. It is scarcely the part of a work on municipal government to relate in detail the history of this movement. The subject is almost as large as that of municipal government itself, and numerous excellent treatises have been written on it. Many cities rely entirely, and all depend to a considerable degree, on the laws of their respective states relating to primaries and elections. This chapter, therefore, touches very lightly on primaries and elections in general and only emphasizes those matters in which municipal differs from state practice, or which are of peculiar interest to the student of city government.

Ballot reform

Those whose political recollection runs back forty years do not need to be reminded that 1888 was a crucial year in American political development. In that year vote-buying rose to startling proportions, while the purchased voters of a middle-western state were marched to the polls "in blocks of five". It was also the year in which the first decided steps toward ballot reform were made. The legislature of Kentucky, a commonwealth in which *viva-voce* voting was still practiced in state elections, enacted a law for Louisville which provided for a ballot printed at public expense. The names of candidates were to be placed on this ballot by means of petitions of fifty or more citizens. The names of candidates were arranged alphabetically under the title of each office and without party designation. At the

same time, provision was made for marking the ballots in booths, where the voter was protected from observation, and for depositing the ballot in the box, folded so as to conceal all markings. This was the first of the ballot acts, called Australian from the fact that the system was originally adopted in South Australia in 1858, which have now been applied to practically all elections throughout the country.

Its results

It is difficult to exaggerate the improvement wrought by the introduction of genuinely secret voting. Forty years ago votes could be bought and their delivery assured. Today only fools buy votes, because venal voters can take money from both sides and then vote as they please. Secrecy has likewise done away with intimidation. No longer does the employer drive his workmen to the polls with ballots held in air. Ballot-box stuffing has become practically impossible, and the whole basket of tricks to which the unofficial ballot furnished the temptation have been made useless. The year 1888 may well be said to mark the dawn of decency in American politics. Its effect was, if anything, more marked on city than on national politics. Even in 1888 men managed to express their will fairly well in the choice of a president, Republican tricks in one state counteracting Democratic stealth in another. City politics, however, was very largely a contest between the politicians and the public interest in which the election system operated like an unfair roulette wheel, rolling the ball always into the politicians' pocket.

Primary reform

Equally significant has been the reform of primary procedure. There can be no doubt that the adoption of the Australian ballot with party designations hastened primary reform. If the state or city was to print a ballot setting forth the nominees of each party for each office, there was obvious necessity for an unimpeachable nominating process. Although by 1888 nearly half the states had laws affecting primaries, there was but one—

Nevada—which had a mandatory, state-wide act regulating in detail the conduct of primary elections. The remainder were local or optional in their application, or confined to the attempted prohibition of a few of the more obvious primary abuses. This is not the place to trace the development of primary legislation through its various stages to the point where nowadays in practically all states in the Union primaries are conducted with all the formality and sanctions provided for elections themselves. Emphasis must be laid, however, on the contrast between a period in which "snap" primaries were ordered by irresponsible committees, the right of party members to participate was arbitrarily decided by these same committees or by *viva-voce* vote of the gangsters in attendance, and unpunished and unpunishable violence and fraud determined the result, and a period in which the dates of primary elections are fixed by law, the right to participate is determined by previous registration or some authentic test, and the voting is conducted by regular election officers in the regular polling places and under ample guarantees against the effects of bribery, intimidation, and other fraudulent practices. The gain has been inestimable. There is, as will presently appear, a good deal of dispute as to the merits of the *direct primary* as against the *convention* system, but no one in his senses proposes to go back to the unregulated primary even as the basis of a convention system. Beginnings were made in the regulation of conventions which never went very far because of the general adoption of direct nomination at the primaries. Primaries and elections are today as honest as such institutions can be made by law and, as compared with unregulated primaries and the unofficial ballot, the difference is as that between light and darkness. Machines and bosses have by no means lost all their influence in politics, but there is now at least nothing to prevent the individual from casting, if he desires, a secret and effective ballot

at both primary and election, and the people, if they will, from making their own choice of candidates and representatives.

Direct primary

In almost all cities in which party nominations are made for municipal office, the method is now the direct primary. The primaries of all parties are usually held on the same day and in the same polling places. Separate ballots are used for each party. The names of candidates are placed on the several primary ballots by petition. The systems in force differ chiefly in the freedom allowed the voter in selecting the party ballot he will vote. In the "open" type of primary, each voter chooses for himself which ballot he will take into the booth. In the "closed" type, some test is applied to determine his party affiliation. In some states, he must have declared his party preference at the time of registration. In others, he must be prepared to take oath that he is a member of the party whose primary ballot he desires to vote and that he intends to vote for its candidates at election, or, in some cases, did vote for them at the last election. The "open primary" is quite destructive of party organization and responsibility. It is a plain invitation of the voters of one party to vote in the primary of another. Where one party is normally dominant, there is a tendency for every one to vote in its primary. The motive of invading voters is sometimes good and sometimes bad, but it is equally destructive of party responsibility. The "closed primary" is not subject to so serious objection from this point of view.

Direct primary *v.* convention system

There is much to be said on both sides of the controversy over the relative merits of the direct primary and a regulated convention system based on regulated primaries. In recent years a strong reaction against the direct primary has manifested itself. Though it has been diligently fostered by the "organization" men of both parties, it has not accomplished anything material in the way of actual legislation. The advocates of the con-

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vention system point to the fact that conventions sometimes nominate men of fine character who would not enter the mêlée of a primary. They also emphasize the cost of the primary campaign which a candidate has to bear himself, thus favoring the rich. They point to the opportunities for demagogy which the primary affords. The friends of the primary lay most stress on the fact that it makes it possible for the people, when aroused, to break the "slate" of the politicians. There can be no doubt that the direct primary somewhat "cramps the style" of the "organization" leaders, but it has not destroyed parties or even eliminated bosses. As compared with the old, unregulated primary, the improvement in the quality of the rank and file of candidates has been enormous. What a well regulated primary and convention system would bring forth no one will really know until it has been tried.

Non-partisan nominations

The direct primary is, after all, a method of making party nominations for partisan elections. At most, it tends to give the voters of a party control of its organization and policies. One of the chief efforts of the early reformers was, as has been seen, to diminish the influence of national parties in city affairs. They preached incessantly, and with some effect, the necessity of independent voting. A large section of the voting public, however, when confronted in the election booth with a party column ballot, balked at voting for candidates of another party. To meet this situation, the reformers first advocated the separation of local from state and national elections. The pull of party loyalty and the strenuousness of partisan exertion would be, it was hoped, lessened, as far as city affairs were concerned, by this means. There had always been a tendency for successful candidates for governor or president to sweep the less interesting municipal ticket in with them. The separation of elections was one of the first municipal reforms to be accomplished and has remained one of the

few the advantages of which have been offset by no undesirable consequences. It is very exceptional, nowadays, to find a city choosing its officers at the same time as the principal state and national officers.

The reformers reasoned, further, that if the party designations were removed from the ballot, the voters could be more easily induced to employ some independent thought. The obvious practical suggestion to that end was nomination by petition, after the English fashion.[1] This, it was quickly found, led to a multiplicity of candidates,[2] a situation of which the machine, with its working organization, was prepared to take prompt advantage by secretly promoting rival good candidates while uniting its whole strength on its own real choice. It has, in consequence, not been much employed in its English form. An attempt has sometimes been made to meet this difficulty by requiring a very long petition. Boston, for example, since 1909 has nominated its candidates for mayor and council by petition. Originally 5,000 signatures were required, but the number was subsequently reduced to 3,000 for mayor, 2,000 for school committee and 100 for councilmen. The result of the mayoralty election of 1925 illustrates the possibility of a minority selection. The vote was as follows: Nichols, 48,448; Glynn, 34,918; O'Neil, 25,330; Coakley, 17,176; O'Brien, 7,680; Keliher, 6,336; Fitzgerald, 2,628; Cook, 1,280; McCauley, 368; Burrill, 292—a total of 144,456 votes cast. In other words, there were nearly 100,000 voters who preferred some other candidate to Nichols, whom the press reported as elected by a large plurality. From this situation an escape was found in the ''non-partisan'' primary, which made its appearance in the Iowa Act (Des Moines Plan) of 1907. This act provided that a candidate, upon filing a petition signed by twenty-five

[1] See the National Municipal League's *A Municipal Program* (1900).

[2] This evil appears in much milder form in England, a very sound tradition on the subject having been built up during the many years when candidates had to bear their share of the cost of the election.

electors, might have his name printed on the ballot at the primary election. The two candidates for each office receiving the highest number of votes became the sole candidates at a second, or final, election. By thus narrowing the final choice to two, the chance of an undesirable minority candidate slipping in over the votes of a divided majority was eliminated. At neither the primary nor final election did any party designation appear on the ballot. In the Dallas charter of the same year, and, independently, in the Berkeley charter of 1909, a modification of doubtful value was introduced by providing that any candidate receiving a majority of the votes cast for any office at the first election should be then and there declared elected.[1] This is well enough if all the offices, or none of the offices, are filled at the first election. Otherwise, there is likely to be a diminution of interest at the second election. Out of the thirty-two cities of over 200,000 inhabitants,[2] according to the census of 1920, nineteen conduct all city elections on a non-partisan basis. In addition Chicago elects her city council on a non-partisan ticket. Of these the great majority [3] make use of one or the other of the forms of non-partisan primary. Among the smaller cities, the proportion of those with non-partisan elections rises still higher. Among most of them the non-partisan primary prevails. Leaving out of consideration the southern cities, where non-partisanship exists in fact, though not in name because there is but one party, this method of nomination and election is to be found in most of the "commission" and "manager" plan cities.

A few cities have sought to save the expense of two

[1] This was practically the system employed prior to 1918 in the election of the German Reichstag. There is no evidence that the authors of the Dallas or Berkeley charters had any knowledge of European elective systems.

[2] Excluding Washington, D. C.

[3] Among the cities which make use of the non-partisan primary are Buffalo, Chicago (for the council only), Detroit, Los Angeles, Milwaukee, Minneapolis, Kansas City, St. Paul, Seattle, Toledo, Columbus (for the council only), Oakland, and Akron.

Preferential voting

elections and at the same time reach a closer approximation of the real will of the majority by the adoption of preferential voting. Of the several possible forms of this device, the only one made use of by American cities is the "Bucklin" plan, adopted for the first time by Grand Junction, Colorado, in 1909, at the suggestion of James W. Bucklin of that city. Candidates are nominated by petition and there are no party designations on the ballot, which is so arranged as to give the voter an opportunity to express his first, second, and third or even more choices for each office to be filled. This is accomplished by providing separate columns for each grade of choice at the right of the candidates' names, in which the voter indicates his preference by making the usual cross. In some cities, the voter may make as many crosses as he likes in the third or fourth column; in others he is limited to a single third or fourth choice. Only one vote can be counted for any candidate on any one ballot. If a candidate has a majority of the first choice votes, he is declared elected. If not, the second choice votes of each candidate are added to his first choice votes, and if any candidate then has a majority of first and second choice votes, taken together, he is elected. In the event that no one has such a majority, the third and other choices are added in and the candidate with the largest number of votes of all grades is the winner.[1]

The purpose of all this is to find the candidate for each position to be filled who is as near as may be the choice of the majority. Preferential voting may be applied to the election of single officers or bodies. It is not to be confused with proportional representation, which is applicable to the election of bodies only for the purpose of representing therein each element in the electorate in

[1] If a fourth column is provided the votes in the third choice column will be added in the effort to give someone a majority before the votes in the fourth column are used. There are variations in the detailed arrangements for the count, but the above statement represents the substance of the process.

FORM OF PREFERENTIAL BALLOT[1]

For Commissioners	First Choice	Second Choice	Third Choice	Other Choice
William Brown	×			
Louis Coe		×		
John Doe			×	
Henry Poe				×
Richard Roe				
Charles Smith				×

DIRECTIONS TO THE VOTER

To vote for any person mark a cross (×) in the square in the appropriate column, according to your choice, at the right of the name voted for.

Second, third or fourth choice is not compulsory.

Vote only as many first choices, or second choices, or third choices, as there are officers to elect.

Vote as many fourth or other choices as you wish.

Vote your first choice or choices in the first column.

Vote your second choice or choices in the second column.

Vote your third choice or choices in the third column.

Vote in the fourth column for all the other candidates whom you wish to support.

Do not vote more than one choice for one person, as only one choice will count for any one candidate by this ballot.

If you wrongly mark, tear or deface this ballot, return it and obtain another.

[1] *Laws of New Jersey*, 1917, Chap. 275.

proportion to its voting strength. The working of the Bucklin plan will be made clearer by examining the tabulation of the results of the vote for municipal judge in Duluth, Minnesota, April 6, 1915. On the basis of these results, the Supreme Court of Minnesota, as described below, held the preferential system unconstitutional. Note should be taken of the fact that Windom with a considerable plurality of first choices was defeated by Smallwood who received a very large number of second choice votes, many of which may have been cast by persons who gave their first vote to Windom.

RESULT OF DULUTH, MINNESOTA, ELECTION
April 6, 1915

	First Choice	Second Choice	1st & 2nd Choice	Add'l Choice	Total
Louisell	992	734	1,726	402	2,128
Norton	3,417	1,501	4,918	167	5,085
Smallwood	3,496	2,845	6,341	240	6,581
Windom	4,408	604	5,012	54	5,066
Totals	12,313	5,684	17,997	863	18,860

Spread and constitutionality

About half of the cities which have adopted preferential voting are in New Jersey, where the plan is embodied in a supplement to the optional commission government act. Among the cities in other states which employ it are Toledo, Columbus, Denver, Portland, Oregon, and San Francisco.[1]

Its spread has been limited by the attitude of the courts in several states. This attitude is fairly indicated by the decision of the Supreme Court of Minnesota in Brown *v.* Smallwood.[2] The constitution of that state provides, "Every male person of the age of twenty-one years . . . shall be entitled to vote at such election—for all officers that now are, or hereafter may be, elective by the peo-

[1] Cleveland used the preferential ballot from 1915 to 1923, when it adopted proportional representation.

[2] 153 N. W. 953.

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ple."[1] The court said, "It was never meant that the ballot of one elector, cast for one candidate, could be of greater or less effect than the ballot of another elector, cast for another candidate. It was to be of the same effect. It was never thought that with four candidates, one elector could vote for the candidate of his choice and another elector could vote for three candidates against him. If he votes for him once, his power to help him is exhausted. If he votes for other candidates, he may harm his choice, but cannot help him."[2]

Working of preferential voting

If each voter always expressed all the choices allowed him, the Bucklin plan of preferential voting would give results certainly as satisfactory as the non-partisan primary system, at approximately half the cost. In fact, four times out of five the results of the two methods would be the same and the fifth time, the Bucklin plan would come nearer to expressing the real popular will. The difficulty is, however, that the voters frequently neglect to express any but their first choices. It is obvious that an expression of second and third choices may help to defeat the candidate of one's first choice. If A, B and C are candidates for mayor and you favor A but dislike B and C you will not voluntarily help B and C by expressing second and third choices for them. The experience of many cities—of San Francisco, for example—has been that so few second and third choices are voted that the victory almost without exception goes to the candidate with a plurality of first choices. The example from Duluth cited above shows second and third choices affecting the result, but this rarely happens. Suggestions have been made for mending that situation by making a ballot void unless all choices are expressed. This remedy is of more than doubtful constitutionality, and even if available is probably worse than the disease.

[1] Art. 7, Sec. 1.

[2] See contrary decision in Orpen *v.* Watson, 93 Atlantic 853, and discussion of constitutionality of proportional representation, in Chap. XV.

The Bucklin plan frequently fails to sustain in practice the promise of its theory. This accounts for the fact that the great majority of cities have preferred to go on paying for two elections rather than adopt it.

Other plans of preferential voting

The same objections do not apply to the plan devised by Professor W. R. Ware. In this system the voter indicates his preference by marking the figures 1, 2, 3, etc., opposite the names of the candidates. The ballots are then sorted into piles in accordance with their first choices. The lowest candidate is then eliminated and his votes redistributed to other candidates according to their second choices. This process goes on, making use of third and other choices when necessary, until but two candidates are left. Then the one with the larger vote is declared elected.[1] The Ware plan does not require the sacrifice of your first choice to your second, for the second and other choices are not called into play unless your favorite candidate is already defeated.

A third system of preferential voting is that developed by Professor Nanson of the University of Melbourne. The ballots are marked in the same manner as in the Ware plan. In counting, however, the figures employed in marking the ballots are set down on the tally sheet. The candidate with the smallest total makes the best showing. If a voter neglects to express as many choices as there are names on the ballot, the election officers put down for each unmarked candidate a figure equal to the average of the unused choices. If, for example, there are seven candidates and only four preferences expressed, each of the three unmarked candidates will have six set down to his account on the tally sheet. When the totals for each candidate have been determined, those whose total is equal to, or greater than, the average are eliminated. The whole process is then repeated as between the candidates remaining until the winner is determined. This system has the advantage of discrimi-

[1] Compare with Hare plan of proportional representation, Chap. XV.

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nating between the value of a first choice and other choices which is quite lost in the Bucklin plan. It is so complicated and difficult of explanation, however, that it is doubtful if it ever will be used on a large scale. As a working measure, the Ware plan is the best of the three. The Bucklin plan has but two things to commend it: the simplicity of the count and the fact that the voter can vote with the familiar cross. Trifling as are these advantages, they have, in fact, been sufficient to win for it the preference of "practical" legislators and charter makers.[1]

Extent to which "non-partisan" elections are non-partisan

It would be idle to claim that the activity of political parties has been eliminated by the adoption of non-partisan nominations and elections. The situation varies very much from one city and from one part of the country to another. In California, where the national parties have been greatly weakened by other causes, non-partisanship in city elections is a reality. West of the Mississippi River as a whole, the influence of the party organizations in city elections has been reduced to very little. At the election of 1925, in Kansas City, however, though the party names were not employed, every one knew which ticket was Republican and which Democratic, and voted accordingly. In the eastern half of the country, parties, if they do not appear directly in the campaign, are at least recognized in the slate-making which precedes election. Previous to the 1925 election, a "Citizens Committee" in Dayton, Ohio, nominated and elected a ticket of two Republicans and one Democrat for the three vacancies in the council. It is easier to achieve non-partisanship in small communities than large, although the experience of the Pennsylvania third-class cities, which were given a taste of non-partisan elections for a few years following 1913, demonstrates that the party

[1] A modification of the Ware plan, allowing only two preferences and using a first and second choice column, is used in state primary elections in Wisconsin and Minnesota.

managers can work the non-partisan system even in places of moderate size. Some charters have gone to the extent of requiring an affidavit from each candidate that he is not the nominee of any party, but such an extreme interference with political freedom has not been generally favored. Even where the two great parties have refrained from activity in city elections, the Socialists have usually nominated party candidates by post-card ballot, or other means, and made a campaign for them on party lines.[1] Taking the country at large, while the results of non-partisanship have not been very decisive, it has made independent voting easier, and has inclined the parties to nominate somewhat better candidates and to put local issues to the front.

Merits and defects of non-partisan system

From the point of view of pure reason, national political parties should have nothing to do with city government. The issues of national and local politics are absolutely dissimilar. The League of Nations, the tariff, the child labor amendment do not split the public along the same lines as the street railway franchise on Market Street, the Belle Isle bridge, or the ownership of the electric light plant. There is no such thing as Democratic sewer pipe or Republican pavement. It makes no difference whether the city engineer believes in "watchful waiting" in international affairs, provided he watchfully inspects the concrete that the construction company is pouring on the viaduct. On the other hand, in any large community, political organization is essential to the satisfactory working of democracy. Without it, public opinion is most often a mere babel. Without it, no cause can be brought to victory.

The answer would seem to be, municipal parties. At once, however, we are confronted with the fact that the issues of city politics give no foundation for the establishment of permanent parties. These issues are, with rare exceptions, questions not of principle but of im-

[1] See especially experience of Dayton, Ohio, and Berkeley, California.

mediate expediency. They are likely to center upon projects of improvement. Even the time-honored distinction between radicals and conservatives will not account for most of the differences which develop concerning questions of municipal government. There is a new set of such issues with a wholly new alignment upon them at almost every election. At any rate, permanent municipal parties have never flourished except in London, where elections have been contested for nearly half a century by Progressives and Moderates. In recent years a London Labor Party has also entered the arena of London politics. The independence of these local parties, however, especially since the advent of the London Labor Party, is becoming more and more a matter of name and less a reality. It is now generally understood that Conservatives and Progressives, Liberals and Moderates, and London Labor Party and Labor Party are well-nigh identical. The charge is openly made that County Council elections are used to train Parliamentary candidates and to keep the party machines in operation.

Since independent municipal parties refuse to develop, attempts to exclude the national parties from city politics produce curious and interesting results. In our small cities, even up to fifty thousand population, it is possible to create, by volunteer effort, temporary organizations to deal with each election as it occurs. The larger the city, however, the more difficult and costly is the process of building an organization and the more seldom can it be resorted to. Instead, there is a tendency to rely on organizations already in existence. These may be the national parties or religious, economic or social organizations within the community. There is real reason to believe, as many do, that the influence of national parties in local affairs is scarcely as detrimental as the interference of churches, labor unions, or secret societies. At least party contests may be conducted without the bitterness and heat which frequently arise when lines are

drawn between Catholic and Protestant or employer and employee. In English and European cities, except London, the national party organizations appear unblushingly in local elections, but they are somewhat more successful than ours in taking sides on questions of municipal policy. The problem of parties in city elections is truly a perplexing one. Non-partisanship, we may conclude, is an ideal very difficult of realization on any satisfactory basis. An equally well-defined lesson of experience, however, is that it is desirable to remove every artificial aid to party domination, such as partisan primaries and party designations on the ballot. If we make it as easy as may be for the voter to be independent we at least put a premium on good party behavior. A reasonable independence in the voter is the best means of forcing the local organizations of the parties to take strong positions for municipal improvement and better municipal service.

Non-voting

All the perfection of nominating and electing machinery which has taken place in the past forty years can come to nothing if the people fail to make use of it. The small proportion who participate, even to the extent of registering and voting, in the conduct of city affairs is, in certain aspects, truly appalling. In 1923 only sixty-two percent of the adult citizens of Chicago registered, while but forty-nine percent actually voted in a bitterly contested mayoralty election.[1] In 1925, out of an estimated resident citizen population of 2,614,370, only 1,335,932, or 51.9 percent, registered, and 1,133,485, or 43.4 percent, voted at the city election in New York. At the preceding primary but 538,549 persons, or 20.6 percent, voted. The figures for the elections from 1901[2] leading up to the climax of indifference of 1925, is very illuminating.

[1] Merriam and Gosnell, *Non-Voting*, 26.

[2] Unpublished report of J. M. Leonard to Bureau of Government, University of Michigan.

NEW YORK CITY

	Vote Cast	Population	Resident Adult Citizens	Percent of Vote Cast
1901	579,301	3,519,761	783,542	73.8
1903	589,898	3,684,881	814,544	72.3
1905	590,520	3,850,002	845,546	69.8
1909	595,159	4,422,685	907,550	65.6
1913	627,017	5,173,064	1,010,125	62.1
1917	671,751	5,400,343	1,126,229	59.7
1921	1,173,651	5,751,859	2,499,577	47.1

It is apparent that what had been a steady, though mild, decline in the years 1901-17 became, with the advent of woman suffrage, a veritable debacle. Distressing as this situation is, it is neither surprising nor devoid of hope. Many women did not desire the ballot; many more have been restrained from exercising it by timidity, inertia, or the pressure of family or racial opposition. There is reason to believe that, with the lapse of time, women will come to think of voting just as seriously as men. Unfortunately, they will probably think of it no more seriously. The careful study made by Merriam and Gosnell of some 6,000 cases of non-voting in the Chicago election of 1923 showed that in upwards of two-thirds of them failure to vote was due directly or indirectly to indifference. One of the great problems of city progress is the conquest of this indifference. The effect, however, of non-voting on the current quality of city government may be exaggerated. While no one can speak on the matter with authority, it is probable that those who do vote are a fair sample of those who are eligible to vote. There is, for example, no reason to believe that the New York elections of 1921 and 1925, or the Chicago election of 1923, would have resulted any differently had every last citizen cast his ballot. Non-voting, therefore, is alarming as a symptom of popular indifference to government, rather than as the occasion for immediate misgovernment.

Compulsory voting

The suggestion is not infrequently heard that we make voting compulsory. This has been done in several foreign countries, with varying results. The greatest degree of success has been attained in Belgium, which adopted compulsory voting in 1893. The proportion of persons abstaining from voting is normally less than six percent of the number of qualified voters. It is interesting to note, however, that the introduction of woman suffrage in city elections was accompanied by an effect similar to, though much less pronounced than, that produced in the United States. The Belgian women did not remain away from the polls at the election of 1921—even the nuns from the convents voted—but they cast many blank ballots. Out of 81,693 votes cast in Brussels that year 8,018, or nearly ten percent, were blank or null. The penalties for non-voting in Belgium are apparently trifling and the number of cases tried but a few hundred a year. A first offense entails nothing more severe than a fine of from one to three francs and the first offender is not infrequently dismissed with a simple reprimand. For a second offense within six years the penalty is from three to twenty-five francs. If a third offense is committed within ten years of the first, the offender's name is posted on the wall of the city hall and the fine is again from three to twenty-five francs. The conviction for a fourth offense within fifteen years, however, in addition to the same penalty, deprives the voter of his right to suffrage for ten years during which time he can receive no appointment, promotion, or distinction from any public authority. The table on page 262 shows the number of cases arising under the compulsory voting law in the legislative elections of 1906-08-10-12. All the facts point to the success of compulsory voting in Belgium.[1]

In Spain, on the contrary, where compulsory voting

[1] T. H. Reed, "Compulsory Voting in Belgium," *National Municipal Review*, XIV, 335-336 (June, 1925).

CASES OF NON-VOTING BEFORE THE COURTS

Year	Number of Voters		
	Acquitted	Reprimanded	Fined
1906	197	250	450
1908	250	229	378
1910	313	326	428
1912	755	709	737

has existed since 1907, the law has remained practically a dead letter. Professor Merriam found the plan working fairly well in Czechoslovakia.[1] At the local elections of 1923 in Prague, 87.5 percent of the qualified electors voted—comparing, in this respect, very favorably with the zeal of Chicago's voters in the same year. It is perhaps significant that, as in Belgium, the number of persons punished is a minute fraction of those not voting. Similar results may be cited from Zurich, Schaffhausen and a few other Swiss cantons.[2] Holland held her first election under the compulsory system in July, 1925. The number of abstentions was considerable—26,000 in Amsterdam alone, of whom about 4,000 were summoned to appear in court.

Compulsory voting in the United States

The only actual attempt to penalize non-voting in any American city was a provision introduced many years ago into the charter of Kansas City which imposed a poll tax of $2.50 on male residents of legal age who did not vote. The provision was held unconstitutional by the Supreme Court of Missouri[3] on the ground that suffrage was a "sovereign power" a "free exercise" of which was guaranteed by the constitution, and to which the sovereign citizen could not be constrained by penalty. There is ample ground for criticism of this decision as very bad political science, but it remains the only decision in the subject. The constitutions of North

[1] "Compulsory Voting in Czechoslovakia," *National Municipal Review*, XIV, 65-68 (February, 1925).

[2] Massachusetts Constitutional Convention, *Bulletin* (1918), II, 238.

[3] Kansas City *v.* Whipple, 136 Mo. 475.

Dakota and Massachusetts contain provisions specifically authorizing the legislature to provide for the punishment of non-voters, but no action has been taken under them.

Objections to compulsory voting

It is very doubtful whether we should turn to compulsion as a means of getting the electorate to the polls. Foreign experience is far from decisive. The plan has been an unquestioned success over a long period only in Belgium. Even there, no one can say how much the high percentage of participation is due to the compulsory law and how much to party rivalry of extraordinary bitterness. Proportional representation, by making every vote count, forces each of the three parties to strain every nerve to get the last possible voter to the polls. In Belgium, also, registration is not, as with us, a matter of personal initiative at periodic intervals, but, as far as the citizen is concerned, is practically automatic. The difficulty of forcibly compelling such a mass of non-voters as exist in New York or Chicago to go to the polls is so prodigious as to offer little chance of success. Supposing that a compulsory voting law in New York got eighty percent of the eligible citizens to cast a ballot, there would remain more than half a million delinquents to deal with. Furthermore, there is such a thing as rational and justifiable non-voting. Many a good citizen stays away from the election booth because of honest and not unintelligent perplexity between candidates and issues. He may be a party man who desires to rebuke his own party without aligning himself with another. To punish him for non-voting under such circumstances savors a bit of tyranny. There is, as we have seen, no immediate danger from non-voting to justify compulsion. Finally, Americans do not react well to compulsion.

Other remedies for non-voting: (1) Official registration

The significant discrepancy does not lie between the number of votes cast in proportion to the number of registered voters, but between those registered and those who might register if they would. As a means of pre-

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venting fraudulent padding of the voters' list, the great majority of our states require personal registration at intervals of one or two years. However necessary personal registration may have been as an escape from the corrupt registration systems of forty years ago, it is itself obviously in need of a remedy when half the adult citizens do not register. On this subject, foreign experience is as decisive as it is indecisive on compulsory voting. It demonstrates conclusively that it is possible to have official registration which is complete and honest. We have not, it is true, the advantage of such records of each individual's progress from birth to death as are maintained by the European police. But the task of establishing a permanent official register of voters is by no means impossible. It would undoubtedly much increase the number of votes cast. There are many non-registered persons at every election who would vote under the stimulus of election propaganda if they had not, in some way, failed to register.

(2) Absent voting

The laws of most states now make some provision for absent voting; not all of them, however, are applicable to municipal elections. Those which do apply usually provide that a person expecting to be absent on election day may make application, personally or by mail, a prescribed length of time before election, to the election authorities of the city for a ballot, which he marks and incloses in an envelope provided for the purpose. He then subscribes to an affidavit, printed on the envelope, to the effect that he is to be unavoidably absent and that he does not intend to vote elsewhere. Finally, he mails the envelope back to the authority from which he received it. The extent to which absent voters avail themselves of this privilege varies very much from city to city. Only 226 persons did so in the Chicago election of 1923.[1] In Cuyahoga County (Cleveland, Ohio), however, the numbers using the absent voters' privilege at

[1] Merriam and Gosnell, *op. cit.*, 234.

the state elections were 827 in 1920, 665 in 1922, and 1472 in 1924.[1] On the whole, as familiarity with the process increases, there is a tendency for it to be more generally employed. There is no reason why the provisions of the absent voting laws should not be applied to all cities and to persons detained at home by illness or other circumstances, as well as to those away from home.

(3) Proper arrangement of voting hours

In Chicago and many other cities, the number of non-voters is materially increased by the too early closing of the polls. The hours 6 A.M. to 4 P.M. are not well calculated to get out a maximum proportion of voters among the working classes, who can vote only on the way to work. Often the polling places are congested in the early morning hours. Keeping the polls open until six or seven o'clock allows for voting on the way home from work. The cares of the day over, voting can be undertaken more whole-heartedly than in the interval between a bolted breakfast and an imperious time clock. On the continent of Europe elections are always held on Sunday, with very good results. It would be perhaps too much of a shock to conservative American Sabbatarianism to propose doing the same thing in this country. Nevertheless, there is no duty more sacred than that of voting.

Present status of municipal politics

The American's fondness for startling strangers, coupled with the habit of exaggeration for humor's sake, has led to a lot of loose talk about the depravity of our municipal politics. Foreign observers come here expecting to find the conditions Bryce described, and we send them home shivering with fresh tales of horror. Recognizing that in all countries politics is a game played for stakes and never anywhere governed by the rules of amateur sportsmanship, American municipal politics is today, on the whole, no better and no worse than municipal politics in any other country. The necessity of electing a President at large in a vast country has led to the

[1] Unpublished study of Dr. James K. Pollock, University of Michigan.

development of party organization to an extraordinary degree. This in turn has led, and still leads, to regrettable displays of party spirit in making appointments and the distribution of favors. We are not alone, however, in the commission of such sins. The Belgian "Liberal" party long controlled the communal council of Brussels. It governed, on the whole, very well; but a careful examination would have found few important offices filled by "Catholics".

Machines still exist in most of the larger cities, although there are cities like Detroit, San Francisco, and Los Angeles which have nothing which demands the name. Machine methods have not changed in their essential character. The precinct leader, by voting his family, his friends, the office-holders, the prospective office-holders and sometimes, though rarely, those whom he has more directly bought, still controls the primary for the boss. The absence therefrom of the great majority of independent voters continues to contribute an essential element to the situation. There is seldom, however, any of the "raw stuff" of older days. The machine today is afraid to offend the good taste of the voting public which, though ordinarily indifferent, is more easily aroused than formerly. The boss is no longer normally an absolute monarch, nor the machine a party autocracy. They rule, if not by the deliberate assent, at least by the tacit acquiescence of the people. Their tenure is so insecure that they are careful not to offend the sentiments or moral standards of the public. With the disappearance of "raw" methods have gone from most of the places of leadership the rough-neck politicians. The current Republican boss of Cleveland is a Harvard graduate. The present leader of Tammany Hall is a graduate of New York University, a member of the bar, and, according to his friends, well versed in the humanities. The "organization" leaders of today are apt to know what good city government really is. Further-

more, politicians have always been much influenced by their desire for the good opinion of the element of society to which they belonged. As the social status of the politician has improved, the significance of this form of restraint has increased. Perhaps the worst form of city politician is the demagogic type—the loud-mouthed and blatant fellow in whom knave and fool are judiciously combined. Their careers, happily, are seldom long. On the average, American city politicians are not so very different from French, German, or British politicians of the same rank. Forty years ago American municipal politics was an abnormal, today it is a perfectly normal, expression of democracy.

REFERENCES

On the general subject of this chapter see, W. B. Munro, *Municipal Government and Administration* (1923), I, 255-307, and W. Anderson, *American City Government* (1925), 200-260.

Ballot reform is very ably discussed in E. C. Evans, *A History of the Australian Ballot System in the United States* (1917). See also on the general aspects of elections, ballots, etc., P. O. Ray, *An Introduction to Political Parties and Practical Politics* (rev. ed., 1922), 322-366, and R. C. Brooks, *Political Parties and Electoral Problems* (1923), 382-420.

The direct primary, especially the story of its use, is very well treated in C. E. Merriam, *Primary Elections* (2nd ed., 1909). The most thorough discussion of its working in a particular state is R. S. Boots, *The Direct Primary in New Jersey* (1922). See also R. C. Brooks, *Political Parties and Electoral Problems* (1923), 241-270. An excellent statement of the case against the direct primary is to be found in A. B. Hall, *Popular Government* (1917). In recent years the *National Municipal Review* has published several interesting articles on the more recent developments of the direct primary.

The best brief account of preferential voting is to be found in Massachusetts, *Bulletins for the Constitutional Convention* (1918), II, 303-319. The only worthwhile study of non-voting is C. E. Merriam and H. F. Gosnell, *Non-Voting* (1924). Compulsory voting is treated in the same, 227-240. See also, C. E. Merriam, "Compulsory Voting in Czechoslovakia," T. H. Reed, "Compulsory Voting in Belgium," above.

The provisions of the Boston charter relative to nomination by petition, of the Iowa act of 1907, of the Berkeley, Cal., charter of 1909 relative to the non-partisan primary, and of the San Francisco charter relative to preferential voting are reprinted in Reed and Webbink, *Documents*. Brown *v.* Smallwood and Kansas City *v.* Whipple appear in the same collection, as does the section of the Massachusetts constitution authorizing compulsory voting.

CHAPTER XV

PROPORTIONAL REPRESENTATION

Why the demand for proportional representation?

AMONG devices for the improvement of popular control in city government, proportional representation has been the last to have a trial. In appearance, at at least, it is a more radical departure from our traditional practice than any other recent "reform", for it seeks to alter fundamentally the basis of representation in city councils. As already noted, American cities have shifted back and forth a good deal between election by wards and election at large. If in recent years the tendency has been strongly toward smaller councils, elected at large, the balance has been in a measure restored by the reversion, in 1925, of Boston and Los Angeles to the ward plan. Most of the larger cities have had at least one experience with each of the plans. It would appear from all this, as is in fact the case, that the merits and defects of the one almost exactly set off the merits and defects of the other. Ward election is based on the principle that the people who live together in a given territorial unit have certain interests separable from those who live in other territorial units—the same principle which has determined the representative systems of state and nation. In so far as there are such different interests in the various sections of a city, ward election has, at least partially, secured the representation of those interests. That it has at the same time brought small men into city councils and facilitated control by machines and bosses is a matter of common knowledge.

At-large election is based on the same principle, but with the assumption that the city as a whole is a unit

in which the common interests of the people are much more important than their diverse interests. When this is really the case, as it is in most small and medium-sized cities, at-large election has very definitely carried the day over ward election. In the larger cities, a city-wide choice of councilmen has increased the caliber of candidates and made easier periodic revolt from bossism, but at some sacrifice of the close touch which ought to exist between citizen and representative. Furthermore, when the council is chosen by plurality or majority vote, at-large election frequently delivers the whole body to one social group, to the exclusion of even large minorities. No demonstration is necessary of the ill effects of rule by an unchecked and uncriticized majority. It is this fact, more than anything else, which has led municipal reformers to seek a means of preserving the advantages of at-large elections and at the same time giving representation to each party or other important grouping of opinion regarding municipal problems. This many of them believe they have found in proportional representation.

The essential principle of proportional representation

There are numerous systems of proportional representation, but all of them have a common end, namely, the apportionment of representation to voting strength. They substitute for the old local constituency a new type of constituency, *i.e.*, a group of like-minded voters irrespective of the place of their residence. In other words, if there are nine candidates to be elected, any party or group polling one-ninth of the votes [1] is entitled to a representative in the council. This is a proposition now generally accepted on the continent of Europe and in many other parts of the world. It must be admitted to be intrinsically reasonable.

The first suggestion in print of such a plan of representation was probably made by Thomas Gilpin, an

[1] In none of the actual systems, as we shall see, is this ideal more than approximately reached.

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Origin and progress of proportional representation

American, in 1844.[1] Two years later, Victor Considérant addressed an exposition of the "truthful election" to the Grand Council of Geneva.[2] In 1855, proportional representation (by the single transferable vote) was actually introduced into the constitution of Denmark.[3] Credit for the intellectual parentage of proportional representation in the English-speaking countries belongs to Thomas Hare, who published, in 1857, a work entitled "The Machinery of Representation," in which he advocated a plan similar to that adopted in Denmark. He followed this, in 1859, with his more important work, "The Election of Representatives, Parliamentary and Municipal." How wide an impression these works would themselves have made will always remain doubtful, but their thesis was given a world-wide currency by John Stuart Mill in his celebrated "Considerations on Representative Government," published in 1861. Societies were formed for the promotion of proportional representation, but it was not until the last decade of the nineteenth century that any tangible results were secured.[4] In 1891, the canton of Ticino in Switzerland, as the result of a bitter and bloody party quarrel, was advised by the Federal Council to adopt proportional representation (free list system). The success of the experiment in pacifying the parties was so great that other cantons hastened to imitate Ticino. In 1894, a measure of proportional representation was applied to the election of city councils in Belgium. The year 1899 saw, in that country, the first appli-

[1] *The Representation of Minorities of Electors to Act with the Majority in Elected Assemblies,* Philadelphia (1844). It has been reprinted in the *Annals of the American Academy of Political and Social Science,* VII, 238-252 (1896).

[2] *De la Sincérité du Gouvernement Représentatif, ou Exposition de l'Élection juridique* (Geneva, 1846). Reprinted, Zurich, 1892.

[3] The voters chose, in each district, electoral colleges, the members of which voted by the single transferable vote. It was originally applied to the election of a single-chambered legislature. Later it was limited to the choice of the upper house in a two-chamber legislature. Proportional representation has never been wholly abandoned in Denmark and is now extended to all elections.

[4] Unless account is taken of certain experiments with crude forms of minority representation, which are discussed later in this chapter.

cation of the device to the election of a national legislature by direct vote of the people. In succeeding years, the idea made rapid progress on the continent, although its adoption became general only after the World War. Without attempting to go into detail, it is enough to say that it has become the normal election procedure in Austria, Belgium, Czechoslovakia, Danzig, Denmark, Esthonia, Finland, France, Germany (and the German states), Holland, Jugoslavia, Poland, Sweden, and Switzerland and its cantons.[1] In most of these countries, France being the most important exception, the system is applied to local as well as national elections.

In the meantime, the subject has been extensively, but rather fruitlessly, agitated in this country. A Proportional Representation League was formed in 1893, but it was nearly a quarter of a century before an American city adopted the plan.[2] It has so far found its way into only six cities—all under home rule charters—in each case in connection with the city manager plan: Ashtabula (1915), Boulder (1918), Kalamazoo (1918), Sacramento (1921), Cleveland (1923), and Cincinnati (1925). As a result of adverse decisions by the Supreme Courts of Michigan and California, it is no longer in force in Kalamazoo and Sacramento. Its slow progress in this land of easily adopted expedients is to be explained, if at all, by the continued prevalence here of the two-party system. It has long been observed that changes in the structure of government are made, not in response to any process of abstract reasoning, but to correct irritating abuses. Where, as on the continent of Europe, there are numerous parties, a plurality system frequently enables a minority of the electors to win a majority of the representatives. Here is an abuse which leads straight to the conclusion that all parties should be represented pro-

[1] Italy adopted the system in 1919, but under Fascist rule it has been, at least temporarily, abrogated.

[2] It has never been applied to any of the larger political units in this country.

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portionately. With us, if one party captures a council or legislature, it is commonly an expression of majority will to which the minority bows without rancor. As non-partisanship has gained ground in municipal affairs, it has been accompanied, as a rule, by a double election system, insuring as near as may be that the final verdict at the polls shall be the verdict of a majority. No matter how well founded is the theory that the council should be a cross-section of the community in which every element is represented proportionately, it has lacked the impetus which in other lands has come from a rankling sense of the injustice of the older methods of election.

The "Hare plan"

After some early disagreements, the advocates of proportional representation in the United States have united in urging the so-called "Hare plan," or single transferable vote. No city has adopted, or seems likely to adopt, any other system. It is called the single transferable vote because each voter has only one vote, which, however, may be transferred to his second choice if his first preference is elected without his vote, or cannot be elected with it. In the same manner, the vote may be transferred to his third choice if, for either of the above reasons, it can be of no use to his first and second choices, and so on indefinitely. Thus the Hare plan seeks to give the voter the greatest opportunity possible of having his ballot counted for some candidate of his choice.

The voter's part

The task of the voter is very simple. Candidates are nominated by petition. Their names are arranged on the ballot in a single column.[1] The voter expresses his choice by putting the figures 1, 2, 3, etc., opposite the names of candidates to indicate the order of his preference. He may express only one choice, or as many as he likes, up to the total of names on the ballot. The more choices, however, which he indicates, the greater his chance of making his ballot count in electing someone.

[1] The order may be varied from precinct to precinct, so that no candidate may have a monopoly of the enviable position at the head of the list.

The number of votes necessary for election is called the "quota". The whole number of valid ballots cast is divided by the number of places to be filled, plus one. The next highest whole number is the quota. If there are ten thousand votes cast and six places to be filled, the quota is 1429. (10,000 divided by 7 equals 1428 4/7.) This is the largest whole number which will go six times, and not seven, in ten thousand.

The quota

The ballots are segregated, counted, and tied into bundles by the election officers in each precinct, in accordance with their first choices. They are then transported to a central point, where all the further stages of the count are carried out. After checking the precinct count, the next step is to determine the quota as described in the preceding paragraph.[1] The first choice ballots of each candidate are assembled and counted and, if any candidate proves to have first choices equal to or in excess of the quota, he is declared elected. The surplus of the ballots beyond the quota on which elected candidates are indicated as first choice are then redistributed, the largest surplus first, in accordance with their second choices. The particular ballots to be taken for transfer are usually obtained by taking, as they come and without selection, an equal number of ballots from those cast[2] for the candidate in each precinct. As soon as any other candidate reaches the quota, no more transferred ballots are counted for him. If, by the transfer of the surplus ballots of those elected, the required number of candidates have not received the quota, the candidate with the smallest vote, including transfers (if any), is eliminated and his ballots redistributed. This goes on until the required number receive the quota, or until the number of candidates left unelected or uneliminated no more than

The count

[1] For a detailed description of the actual procedure in counting ballots, see Helen M. Rocca, "How Cleveland's First Proportional Representation Ballots Were Counted," *National Municipal Review*, XIII, 72-77 (February, 1924).

[2] Not counting those on which no further choices are expressed.

TABLE VI—REGULAR MUNICIPAL ELECTION FOR CITY COUNCILMEN

GENERAL RESULT RECORD

Elected November 6, 1923, in the City of Cleveland, Ohio

No. to Be Elected 6 Quota 2,963	1st Count	2nd Count Transfer of Finkle's Surplus		3rd Count Transfer of Heinrich's Votes		4th Count Transfer of Harris' Votes		5th Count Transfer of Thomas' Votes		6th Count Transfer of Schulze's Votes		7th Count Transfer of Butler's Votes		8th Count Transfer of Lyons' Votes	
		Ballots	Result	Ballots	Result	Ballots	Result	Ballots	Result	Ballots	Result	Ballots	Result	Ballots	Result
1. Bronstrup (R.)	1,387	1,065	2,452	15	2,467	7	2,474	15	2,489	12	2,501	16	2,517	16	2,533
2. Butler	392	36	428	5	433	5	438	12	450	7	457	—457	...	...	...
3. Carroll (D.)	723	91	814	4	818	6	824	7	831	9	840	48	888	20	908
4. Ferris	790	45	835	4	839	26	865	4	869	56	925	17	942	4	946
5. Finkle (R.)	5,314	—2,351	2,963	...	2,963	...	2,963	...	2,963	...	2,963	...	2,963	...	2,963
6. Fleming (R.)	2,915	48	2,963	...	2,963	...	2,963	...	2,963	...	2,963	...	2,963	...	2,963
7. Harris	164	27	191	4	195	—195	...	...	...	...	...	...	...	...	...
8. Heinrich	130	56	186	—186	...	...	...	...	...	...	...	...	...	...	...
9. Lyons (D.)	427	21	448	7	455	10	465	4	469	5	474	28	502	—502	...
10. McGinty (D.)	2,087	293	2,380	13	2,393	27	2,420	14	2,434	10	2,444	82	2,526	97	2,623
11. Murrell	858	99	957	7	964	9	973	24	997	5	1,002	28	1,030	11	1,041
12. O'Reilly (R.)	622	165	787	3	790	8	798	7	805	10	815	48	863	63	926
13. Reynolds (D.)	417	42	459	7	466	9	475	8	483	7	490	27	517	99	616
14. Schulze	245	24	269	17	286	7	293	2	295	—295	...	...	...	...	...
15. Thomas	166	30	196	3	199	5	204	—204	...	...	...	...	...	...	...
16. Walsh (D.)	2,069	76	2,145	15	2,160	3	2,163	14	2,177	31	2,208	32	2,240	98	2,338
17. Wing	1,650	113	1,763	23	1,786	33	1,819	12	1,831	69	1,900	52	1,952	30	1,982
18. Zupnik	380	119	499	12	511	5	516	1	517	10	527	4	531	7	538
Scattering	4	1	5	5	...	...	...	...	...	...	...	...	...	...	...
Ineffective Ballots	...	...	5	52	52	35	87	80	167	6	231	75	306	57	363
Totals	20,740	...	20,740	...	20,740	...	20,740	...	20,740	...	20,740	...	20,740	...	20,740

TABLE VI—REGULAR MUNICIPAL ELECTION FOR CITY COUNCILMEN—*Continued*

No. to Be Elected 6 Quota 2,963	9th Count Transfer of Zupnik's Votes		10th Count Transfer of Reynolds' Votes		11th Count Transfer of Ferris' Votes		12th Count Transfer of Carroll's Votes		13th Count Transfer of Murrell's Votes		Elected Candidates with Order of Election
	Ballots	Result	Ballots	Result	Ballots	Result	Ballots	Result	Ballots	Result	
1. Bronstrup (R.).	37	2,570	31	2,601	102	2,703	57	2,760	80	2,840	1. Bronstrup (6)
2. Butler	...	...	...	...	...	...	...	...	...	...	2.
3. Carroll (D.)...	25	933	54	987	16	1,003	—1,003	...	...	...	3.
4. Ferris	7	953	6	959	—959	...	...	...	...	...	4.
5. Finkle (R.)....	...	2,963	...	2,963	...	2,963	...	2,963	...	2,963	5. Finkle (1)
6. Fleming (R.)..	...	2,963	...	2,963	...	2,963	...	2,963	...	2,963	6. Fleming (2)
7. Harris	...	...	...	...	...	...	...	...	...	...	7.
8. Heinrich	...	...	...	...	...	...	...	...	...	...	8.
9. Lyons (D.)....	...	...	...	...	...	...	...	...	...	...	9.
10. McGinty (D.)..	58	2,681	116	2,797	33	2,830	133	2,963	...	2,963	10. McGinty (3)
11. Murrell	3	1,044	20	1,064	34	1,098	30	1,128	—1,128	...	11.
12. O'Reilly (R.)..	21	947	71	1,018	26	1,044	131	1,175	78	1,253	12.
13. Reynolds (D.)..	18	634	—634	...	...	...	...	...	...	...	13.
14. Schulze	...	...	...	...	...	...	...	...	...	...	14.
15. Thomas	...	...	...	...	...	...	...	...	...	...	15.
16. Walsh (D.)....	73	2,411	143	2,554	28	2,582	194	2,776	65	2,841	16.
17. Wing	52	2,034	86	2,120	542	2,662	74	2,736	227	2,963	17. Wing (4)
18. Zupnik	—538	...	...	...	...	...	...	...	...	...	18.
Scattering	...	...	...	...	...	...	...	...	...	...	
Ineffective Ballots..	244	607	107	714	178	892	384	1,276	678	1,954	
Totals	...	20,740	...	20,740	...	20,740	...	20,740	...	20,740	

Candidates endorsed by the Republican and Democratic parties are indicated by (R.) and (D.).

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equals the number of places remaining to be filled. In the whole process, of course, ballots which cannot be counted for their second choice by reason of his previous election or elimination are counted for the third choice, and so on to the limit of choices expressed.

An example from Cleveland

To make this description more concrete, apply it to the tabulation of the vote in the third Cleveland district at the election of 1923, on pages 274 and 275. The total vote cast was 20,740, the number of positions to be filled, 6, the quota, 2,963. Only one of the eighteen candidates reached this figure; that is, Finkle, who received 5,314 first choices. Finkle was declared elected and his surplus of 2,351 votes redistributed. Forty-eight of these ballots were sufficient to give Fleming the quota, and no more votes were transferable to him. Henceforth, the votes of these two candidates remain 2,963 across the whole table. Four positions remained to be filled, which necessitated the elimination of the lowest candidate, who, with votes transferred from Finkle's surplus, had only 186 choices. This process of elimination was carried on with the successive eliminations of Harris, Thomas, Schulze, Butler, Lyons, Zupnik, Reynolds, Ferris, and Carroll, when on the twelfth count, a third candidate, McGinty, reached the quota. On the next elimination, that of Murrell, Miss Wing was the fourth quota candidate. There were then but three candidates unelected or uneliminated, with two positions left to be filled. The elimination of the lowest, O'Reilly, obviously left the two remaining places to Walsh and Bronstrup; so no actual redistribution of O'Reilly's votes was necessary. The rapid increase of the number of untransferable ballots with almost every distribution is accounted for by the failure of many voters to indicate the full number of possible preferences.

Size of the council and the use of districts

It is obvious that the election of a very large number of councilmen on the same tickets would considerably increase the difficulties of the count. What is of more sig-

nificance, the larger the number to be elected, other things being equal, the smaller will be the quota. If the quota is very small, it opens the way to the representation of minute minorities whose conflicting voices in the council may reduce that body to a babel. The advocates of proportional representation place the maximum number which it is desirable to elect on a single ticket at nine. If the council is to be larger than that, they advise the division of the city into districts. As might be expected, the smaller cities to adopt proportional representation have all applied it to the election of a small council at large.[1] Cincinnati also has provided for a council of nine elected at large. The Cleveland council, however, consists of twenty-five members. The city is divided into four districts, which elect seven, five, six and seven members respectively.

The results of proportional representation

Proportional representation, like most other reforms, has been extravagantly supported and opposed. It scarcely needs to be said that the experience with it in American cities has been too brief to form a sound basis for decisive conclusions. Where introduced, it has not by any means revolutionized the character of the city council. Ashtabula, at the first proportional representation election in this country (1915), chose four of her seven councilmen from among the members of the retiring council. At Cleveland in 1923, sixteen of the twenty-five successful candidates were veterans of the old ward-elected body. On the whole, it seems to have, if anything, slightly raised the average of councilmanic ability and character. The political parties, as such, have not interested themselves in proportional representation elections in the smaller cities, but in Cleveland, where they did do so, the dominant Republican machine elected fourteen members, the Democrats six and the "Independents" five, or fifty-six, twenty-four and twenty percent, re-

[1] Ashtabula, seven; Kalamazoo, seven; and Sacramento, nine; while Boulder has a council of nine, chosen three at each election for overlapping terms.

spectively. In the old council, the proportions were sixty, thirty-four, and six percent. Three, however, of the "Independents" elected in 1923[1] were persons of city-wide prominence and extremely distasteful to the organization leaders. There can be no doubt that the machine, if it can muster the votes, can elect its fair proportion of the candidates under the Hare plan. Why should it not? Proportional representation, however, gives no chance of a "land-slide". A sixty percent majority at the polls cannot be translated into an eighty or one hundred percent majority in the council. At the same time, it is made very difficult for the machine to defeat well-known and highly regarded independents whose personalities readily become centers for the new form of "constituency".

The claim of the advocates of proportional representation, that it results in a more broadly representative council, has been further substantiated in the smaller cities, but the improvement has been by no means startling. There, in the absence of party interference, economic, social, and racial groups, which formerly were unrepresented, have sometimes elected candidates. Opinions may differ as to the propriety of political division in the city council on the basis of such class differences. The intrusion of racial, social, and religious issues into politics is to be deplored, however, because of the bitterness they engender, not because they are less closely related to municipal government than the issues of national politics. It can scarcely be denied that councils proportionately elected have been found to represent the real composition of the community somewhat more accurately than their elder prototypes. One thing may, without fear of contradiction, be alleged in behalf of proportional representation—that it allows the use of at-large election without risk of absorption of all the

[1] Peter Witt, Prof. A. R. Hatton, and Miss Wing.

places by one party. This is a sufficient reason for its extensive adoption.[1]

Relation of proportional representation to the city manager plan

The broader representative character of the council has been frequently urged as a reason for the adoption of proportional representation in connection with the manager plan. Where the executive head of the city is not the subject of popular election, if his leadership is to escape the imputation of autocracy, he is in peculiar need of an effective means of liaison with all sections of the public. Councilmen are capable of being not merely representatives of the popular will in the government, but interpreters of the government to the people. Therefore, in theory at least, a council, whose roots ramify out into all the important groups likely to be directly concerned in the city government, may serve to reconcile the public to the absence of a man of their direct choice in the chief executive position. There is no real evidence, however, to show that the lot of city managers is actually any happier with a proportionally elected council than with any other kind.[2]

Popular attitude toward proportional representation

It would be too much to say that proportional representation has given public satisfaction. The results are reasonably good, but the people show a continued distrust of a process they do not understand. The task of marking a ballot 1, 2, 3 would seem to be simple enough, but a considerable proportion of the voters "boggle" it. At the Cleveland election of 1923, 7.6 percent of the ballots were invalid, mostly by reason of a stubborn disposition on the part of many voters to mark their ballots with crosses. At the first election in Boulder, 297 out of 1167 ballots, or twenty percent, were invalid, mostly for

[1] See recommendations of the author for the city of Cincinnati in *The Government of Cincinnati and Hamilton County* (1924), 189-198.

[2] The author was for a time manager of a city (San José, Cal.) in which the council was wholly drawn from the business and professional element. Organized labor remained very suspicious of the new government. The author has always felt that, with a labor representative on the council, this suspicion could have been allayed. Unhappily, there is no possible scientific verification of such opinions.

the same reason.[1] In Ashtabula, at the third trial in 1919, there were thirteen percent of similar irregularities. Once their vote is cast, however, probably the great majority of voters are hopelessly at sea as to how it will affect the result of the election. The Hare plan count is hard to explain. The sections which must be included in a charter to give effect to it are long, complex,[2] and quite beyond comprehension to anyone who does not already understand the process they are intended to describe. No wonder that the multitude set it down as an inexplicable mystery. It takes much more time to make the count than in an ordinary election. This is obviously a minor consideration if a better council can be secured. Nevertheless, it is irritating to a hasty public, used to getting the results of even a close presidential election in not much more than twenty-four hours, to wait from Tuesday to Tuesday, as was the case before the composition of the first proportionately elected council of Cleveland was announced.[3] During the summer of 1925, the people of Cleveland voted down by a small majority, in an extremely light vote, a proposition to go back to the ward system. One of the principal advocates of the change was Newton D. Baker, ex-mayor of Cleveland, and ex-Secretary of War, whose chief objection seemed to be based on the absence of local representation. Support for the abandonment of proportional representation was very general among the organization men in both parties. The feeling that the plan had not been given a fair trial, however, was too strong for them. In spite of the light vote proportional representation won the day. What the future will bring forth, no one can safely prophesy. In the absence of a keen sense of misrepre-

[1] In Cleveland, especially in the strong machine wards, the voters had the benefit of "schools" of voting.

[2] See Cleveland charter provision in Reed and Webbink, *Documents*.

[3] In the opinion of many persons qualified to judge, no such delay was really necessary. The workers were employed only seven hours on week days and six hours on Sunday.

sentation on the part of numerous powerful groups, proportional representation will probably progress slowly in American cities. A man in desperate pain will swallow the physician's most mysterious draught with unquestioning hopefulness. The slightly ill are apt to reject an unfamiliar prescription.

The constitutional status of proportional representation

As already noted, the Supreme Courts of Michigan and California have held proportional representation unconstitutional.[1] The constitutions of both these states declare that every qualified elector shall be entitled to vote "at all elections". Both courts have held in substance that the right to vote at all elections includes the right to vote for a candidate for every office to be filled and that the Hare plan gives the citizens an effective vote for only one of several positions. The courts have admitted that if the city were divided into territorial districts, each electing one councilman, the elector's constitutional right would not be violated, but they both have distinctly refused to recognize constituencies "based on common opinion instead of arbitrary geographical lines". It is not going too far to say that these decisions read into the constitutions of their respective states something which is not there. The constitutional guarantees of the right to vote were intended to protect the universality of the suffrage, not to preserve any peculiar method of exercising that right. The framers of even so recent a constitution as that of Michigan gave no serious thought to the probable use of the preferential or proportional systems. The constitution makers who wrote the provisions in question intended merely to prevent discrimination between voters. It is demonstrable that the Hare plan gives the voter a more effective share in selecting a representative body than does the plurality system. Certainly each voter's power is equal to that of every other. It would seem that the Supreme Courts of

[1] Wattles *ex rel* Johnson *v.* Upjohn, 211 Michigan 514; People *ex rel* Devine *v.* Elkus, 211 Pacific Reporter 34.

Michigan and California have not really understood the effect of the proportional system. The opinion in the Michigan case exhibits bitter hostility to the system; the California decision is more judicial in its tone, but follows the essential reasoning of the Michigan case to the letter. The Supreme Court of Ohio, however, in the case of Reutener *v.* Cleveland,[1] upheld the proportional representation system, which went into force in that city in 1923. The language of the Ohio constitution, in respect to the right to vote, is almost identical with that of Michigan and California. On this subject, the court said: "On the face meaning of this section, the Hare system of proportional representation does not violate the Ohio constitution, for the elector is not prevented from voting at any elections. He is entitled to vote at every municipal election even though his vote may be effective in the election of less than the full number of candidates, and he has exactly the same voting power and right as every other elector."[2] The court, however, chose to base its decision chiefly on an interpretation of the home rule section of the constitution, holding that it conferred on the municipality power to choose any method for the election of its city council. It would appear, therefore, that there is a conflict of authority with regard to the constitutionality of proportional representation. This is enough to raise a serious obstacle to its further adoption. It will certainly be very difficult to make out a case for the constitutionality of proportional representation in those six states whose constitutions provide that every elector shall have the right to vote for "all officers".[3] In most of the other states the constitutions guarantee the right to vote "at all elections". Whether their courts will follow those of Michigan and California or that of Ohio will depend largely on whether or not the judges

[1] 107 Ohio State 117.

[2] This would seem directly to over-rule the previous decision of State *v.* Constantine, 42 Ohio State, 437.

[3] Delaware, Minnesota, Montana, Nevada, New Jersey, and New York.

understand, if they do not believe in, proportional representation.

List systems of proportional representation

The Hare plan has been the only form of proportional representation ever adopted in American cities. Practically speaking, it is the only form which has ever been advocated on this side of the Atlantic. In Europe, however, where proportional representation is employed in the election of councils in all the cities of several of the principal countries, little attention has been paid to the Hare plan. Wherever on the continent proportional representation has been adopted, it has been by some form of "list" system. The laws of the several countries differ in numerous details, but they are all alike in providing for the nomination of lists of candidates by political parties or other groups and the assignment of seats to each list in proportion to the vote it receives. These list systems all, tacitly or explicitly, recognize the existence of political parties, for the national party organizations in Europe take part frankly and without objection in municipal elections.[1] The object is to provide, as directly as possible, for the representation of the parties in the city council in accordance with their voting strength. In Germany, Austria, Czechoslovakia, and indeed in most of the European countries, each voter has but one vote, which he may cast for the list of his party, but without any opportunity to express a preference as between the nominees of the party. In these systems, the seats to which the party is entitled are assigned to the candidates in the order in which their names appear upon the list. In Belgian cities, each voter has as many votes as there are places to be filled, and may distribute them as he pleases among the candidates of his own, or other, parties. A very complicated system of assigning seats, however, leaves the Belgian voter almost no chance to

[1] Usually, however, the number of signatures required for a nomination is small enough so that an independent group can easily put a list in the field.

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break the order of the party list. Still a third system, which is in use in some of the Swiss cantons, gives each voter as many votes as there are candidates to be elected and leaves him free to cast them as he will. The total vote cast for all candidates of the party determines the number of seats to which the party is entitled and they are assigned to the candidates who have received the largest number of individual votes. This "free list" system is obviously best fitted of all those on the continent to American conditions.

The European systems differ also among themselves in the method of determining the quota. The Greater City of Berlin, whose system may be taken as typical of that in all Prussian cities, elects 225 members to its City Council. The quota is determined by dividing the total number of votes cast by 225. Lists of candidates are nominated in each of the 15 districts by the several parties, each of which also nominates another list for the whole city. Each district is entitled to list as many seats as the quota is contained in the total vote received by it in the district. Obviously, the quota will not go an even number of times in the party's vote within the district; there will be a remainder. These remainders are accumulated in all the districts of the city and as many seats assigned to the party's city-wide list as the quota will go into the total. In Austria, Belgium and several other countries, the quota is reached by the d'Hondt system.[1] In this system the vote received by each party is set down at the head of parallel columns; these figures are then divided by one, two, three, four, etc.; the largest quotients to a number equal to the number of seats to be filled are then counted off, and the lowest of them becomes the quota. This system has the advantage of leaving no seats unassigned, but it does so by ignoring remainders, and gives a trifling advantage to the large

[1] Invented by Prof. d'Hondt of the University of Ghent.

parties.[1] In contrast with all the list systems—even the Swiss free list system—the Hare plan gives a greater freedom for individual expression of choice and is less favorable to the activity of parties. These are doubtless the reasons which have caused municipal reforms in the United States to concentrate upon it. It is surprising, however, that party men have not countered upon the advocates of the Hare plan by suggesting the adoption of some form of list system, for the list systems are easier to explain, simpler in operation and fit better into a scheme of party government.

The "limited" vote in American cities

Proportional representation is to be distinguished from crude systems of minority representation, such as the "limited" and "cumulative" vote. Under the former, each voter has fewer votes than there are persons to be elected. Under the latter, the voter has as many votes as there are offices to be filled and may distribute them as he pleases, cumulating any or all of them on one or more candidates. The latter system has never been tried in American cities.[2] The "limited" vote, however, has been the subject of some interesting experiments, notably in the election of aldermen in New York in 1873 and Boston in 1893. In the latter case, a board of twelve was elected at large, each voter having but seven votes. What happened was that each party nominated but seven candidates and all the people could do was to decide which two of the fourteen they would eliminate. In other words, it played directly into the hands of the party machines, and was shortly abandoned.

It has often been observed that the results of the Hare plan are much the same as if account were taken of first choices alone. In fact, only about five percent of all candidates elected would not have been elected had the single vote been non-transferable. It might be concluded

[1] In Belgian cities the votes are divided by one, one and a half, two, two and a half, etc., giving a still greater advantage to the large parties.

[2] It has been employed for many years in the election of the lower house of the Illinois legislature.

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from this that such a form of limited vote might profitably be substituted for the elaborate mechanism of the Hare plan. If this were done, however, there would be placed a great premium on perfect and close fitting organization. A party with a probable 5,000 votes might, by polling 3,000 for one candidate and 1,000 each for two others, actually win a smaller number of seats than a party which polled 1,100 votes for each of two candidates. The Hare plan, by automatically taking care of such a situation, avoids the necessity for the party taking care of it by perfecting organization and detailed direction to each of its voters. It has been found in practice that both the "limited" and "cumulative" vote[1] result in parties avoiding the nomination of exceptionally strong candidates and in nominating no more candidates than they can probably elect. There is no such temptation under the Hare plan.

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[1] See especially experience in Illinois with "cumulative" voting in legislative elections.

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CHAPTER XVI

INITIATIVE, REFERENDUM, AND RECALL

Direct legislation

NOT only has popular control over municipal government been strengthened by the introduction of devices calculated to facilitate the choice of good representatives, but the people have, in the great majority of cities, been given extensive powers to decide questions directly, without the intervention of representatives at all. The submission to popular vote of certain types of questions—such as incorporation, boundary changes, incurring of indebtedness and liquor licensing—was a common practice long before the era of municipal reform.[1] Since 1910, however, direct legislation has become a truly characteristic means of municipal action. In Detroit, during the fifteen years, 1910-1924, the people voted at thirty elections on one hundred and seventy propositions. In several recent years the questions that they have decided by direct legislation have actually outnumbered the officers that they have elected.[2] This is a strong, but not an extreme, example.

There is now scarcely a city in the country in which the people are not called upon, at frequent intervals, to settle questions of municipal policy directly at the polls. The city voter has developed a new power and a new responsibility, quite apart from the ordinary workings of representative government.

Propositions to be voted on by the people find their way to the ballot in a variety of ways. For convenience they may be divided into four classes:

[1] See E. P. Oberholtzer, *Referendum in America* (1911), 218 *et seq.*

[2] "Direct Legislation in Detroit," *Public Business*, III, No. 15 (June, 1925).

Kinds of direct legislation

(1) *Compulsory Referendum.* Propositions which the state constitution, laws or the city charter require to be submitted to vote of the people;

(2) *Voluntary Referendum.* Measures which the state legislature, or city council, voluntarily submit to the people;

(3) *Referendum by Petition.* Measures already passed by the council, which are placed on the ballot as the result of petitions signed by a specified proportion of the city electorate; and

(4) *Initiative.* Measures directly initiated.

The relative number of measures assignable to each of these classes may be roughly gathered from the experience of Detroit. Of the one hundred and seventy measures before referred to, fifteen were initiated by petition, nineteen were voluntarily submitted by the council, and the remaining one hundred and thirty-six were submitted compulsorily under the constitution and laws of the state of Michigan. No measure previously passed by the council was referred to the people by petition.

(1) Compulsory referendum

The compulsory submission of measures relating to the constitution, the boundaries, and finances is responsible for by far the greater part of popular voting on propositions in cities. A previous chapter [1] has already sufficiently developed the fact that, in the "home rule" states, charters and charter amendments must be submitted to popular vote. In a few states [2] special acts of the legislature relating to a city are subjected to a referendum vote therein. In many states which have no constitutional provision requiring it, it is customary for the legislature to submit new charters and important charter amendments to the people of the locality. Where alternative charter provisions are offered by general law, the city's choice is invariably expressed in the same manner. The long and elaborate charters with which our cities are

[1] Chap. V.

[2] In Michigan, and in Illinois as to acts affecting Chicago.

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provided require making and remaking at frequent intervals and thus give rise to a great deal of voting. All these are matters relating to the "constitution" of the locality and the application to them of the referendum is strongly analogous to the referendum on constitutional changes in state government. Somewhat akin to constitutional propositions are those changing the boundaries of cities, which are almost always made to require the assent of the people of all the units affected. The rapid growth of our cities has caused these annexation elections to be very numerous.[1] The exercise of municipal borrowing powers is made, by the constitutions or laws of many of the states, conditional on popular approval, frequently by a two-thirds or three-fourths vote. Sometimes, too, proposals to exceed a prescribed tax limitation must likewise be accepted by the people. In this financial field again the rapid expansion of municipal activities has been the cause of frequent elections. The compulsory referendum in all these forms is a thoroughly indigenous development in the United States and is interwoven with the whole fabric of our municipal institutions.

(2) Voluntary referendum

There is nothing novel in a state legislature submitting a special act relating to a city to the vote of the people. In some states—it matters little whether from a well considered deference to local opinion or a desire to avoid responsibility—it has become very common. City councils, when permitted to do so by the charter, increasingly find the submission of vexatious questions directly to the people a ready means of escape from embarrassing political dilemmas. On the whole, however, the voluntary submission of proposals, Detroit experience to the contrary, is of less significance than the other forms of direct legislation.

In popular speech, the terms initiative and referendum are applied almost exclusively to the third and fourth methods by which propositions find their way to the bal-

[1] Detroit had twenty-five of them, from 1910 to 1924.

lot. The *initiative* means the reservation of the power to the people to propose measures—ordinances or charter amendments—which, when ratified at a subsequent election, have the force of law. The *referendum* means a power similarly reserved to suspend by petition the operation of an ordinance passed by the city council which can then go into effect only if approved by the electors at a subsequent election. The initiative and referendum, thus understood, were imported to this country from Switzerland and made their first appearance in the statutes of Nebraska in 1897. The law provided that in cities and "other municipal subdivisions of the state" fifteen percent of the voters might initiate an ordinance, to be voted on at the next general election, while twenty percent could demand a special election upon the proposition. The referendum might be invoked on any ordinance by like percentages of the voters, with like effect. The constitution of South Dakota, as amended in 1898, provided both for state-wide and local initiative and referendum. In this case, the proportion of voters required for each proposition was five percent. It was in the San Francisco charter of 1899, however, that the initiative and referendum were first applied to the affairs of a city of considerable size. Thereafter, their adoption went forward more rapidly. With their inclusion in the so-called Des Moines Plan of Commission Government,[1] they spread like wildfire. Being identified in the popular mind with the commission plan, they were adopted almost everywhere where that plan found favor. Subsequently, they accompanied, with almost equal uniformity, the city manager plan. Of the 167 charters examined by Professor Crane in the preparation of his Digest of City Manager Charters, 111 included the initiative and referendum, while several more provided for one or the other of these devices. It must not be supposed, however, that the adoption of the initia-

[1] See Chap. XII.

tive and referendum has been confined to cities with the commission or manager forms of government. It may be said, in general, that in those states in which constitutional provision is made for the state-wide initiative and referendum, the same powers have been conferred upon the people of cities. Among the larger cities of the country, not possessing either the commission or manager form of government, where the initiative and referendum are operative are: Detroit, St. Louis, Los Angeles, San Francisco, Milwaukee, Seattle, and Denver.

Initiative procedure

An initiative petition, according to American municipal practice, must set forth in complete and final form the charter, amendment, or ordinance which the signers desire to see adopted. It is usual to provide that the signatures need not be all on one paper and to protect the purity of the proceeding by requiring an affidavit from the circulator of each petition, or portion thereof, that the signatures are, to the best of his knowledge and belief, the bona fide signatures of qualified electors. It is not uncommon for those interested in promoting an initiative to pay a small sum per name for signatures. In some places, this practice has degenerated into an abuse and has in a few instances been forbidden. A very few charters require that persons come to the City Hall to affix their signatures to the petitions.

When the promoters of the initiative feel that they have sufficient signatures, the petition is submitted to the official of the city who is charged with the administration of city elections (usually the City Clerk or Registrar of Voters). It is the business of this official to examine the petition, and to determine, as nearly as may be possible, the validity of the signatures. It is not unusual for a good many names to be disallowed, the most frequent reasons being the carelessness of women voters in signing their husbands' names instead of their own signatures and the negligence of many persons in affixing their names to the petition without being registered. If

the examining officer finds that there are not sufficient signatures, a few days are usually allowed for the filing of additional names. If, at the end of this time, the petition is still insufficient, it is returned to its circulator and the incident, so far as that petition is concerned, is closed. If the petition is found to have sufficient valid signatures, it is then submitted to the city council. If the council passes the measure in the form in which it appears in the petition, the affair is likewise terminated. If, however, the council refuses to pass the measure, or passes it in an amended form, the measure as presented in the petition must be submitted to the people at the next general municipal election, or at a special election. Which of these methods of submission is to be made use of is ordinarily made to depend upon the proximity of the general election, or upon the number of signatures appended to the petition.

The number of signatures required to invoke the initiative varies from five to fifty percent, the more frequently employed percentages being ten, fifteen, or twenty. These percentages are usually based upon the number of votes cast at the last municipal election, or upon the number of registered or enrolled voters in the city. In some cases, an increased percentage of the voters can demand the submission of a measure at a special election. Usually, however, the measure is submitted at the general election, if that election occurs within a reasonable time after the filing of the petition; otherwise it is submitted at a special election, called within a certain prescribed limit of time from the submission of the petition to the council. Some charters permit the council to submit, along with the initiative measure, alternative propositions, in which case, if more than one receives a majority, the proposition receiving the largest number of votes supplants the other.

For the purpose of making the referendum a workable instrument, the effective date of ordinances passed by the

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Referendum procedure

council is fixed at from thirty to ninety days after their final passage. Exception is always made of the annual appropriation ordinances, the tax levy ordinance and measures, the urgency of which the council declares by an enhanced majority. The referendum, of course, is also not ordinarily applied to proceedings in connection with bond issues, special assessments, and the like. In the interim between the passage of an ordinance and its going into effect, a referendum petition may be filed. The methods of circulating and verifying a referendum are the same as in the case of an initiative petition. If the petition is found to be sufficient, the taking effect of the measure is further suspended until after the people have had an opportunity to vote upon it. This may be at either a general or a special election, the method of submission being determined on the same principles as in the case of an initiative measure.

Compulsory referendum not a matter of serious controversy

About the initiative and referendum, as thus described, has raged a bitter controversy. Undoubtedly accepted as desirable reforms by the masses of the people, many intelligent conservatives have objected to them in principle and remained skeptical of their success in practice. Ample material is available for the study of the initiative and referendum in the field of state legislation, and yet advocates and opponents alike find there what appears to them satisfactory support for their contentions. There is even less hope of reconciling the diverse opinions of these devices in municipal government, for the large number of cities in which they are employed has discouraged any systematic attempt to gather data as to their use. The subject, however, may be appreciably simplified by observing, what is often lost sight of, that the initiative and referendum, in the narrower sense, account for only the lesser part of municipal direct legislation. The compulsory submission of matters affecting the constitution, boundaries, and finances of cities is not a recent importation, but the consequence of a long

and purely American development.[1] It would be idle to contend that the results approach perfection; but the same thing can be said of the whole structure of municipal government. There are few, even of the most confirmed opponents of direct legislation, who would urge the abolition of these requirements. For one thing, they are part and parcel of the painfully developed relation between the state and the city, which has been discussed in a previous chapter. To uproot them would produce a radical disturbance in our whole system. This does not prove, of course, that they ought not to be uprooted, but it is a sufficing explanation of why it is not done.

Extent to which initiative and referendum are used

The initiative and referendum, properly so-called, are, relatively speaking, probably less extensively employed in municipal than in state affairs. They are certainly of far less significance. This is due in large measure to the fact that cities are so much less concerned in matters purely legislative in their nature than are the states. It is also due, in part, to the greater responsiveness of the city council to public opinion. The council is more accessible than the state legislature.[2] It is easy for irate citizens to gather in the council chamber to give visible expression to their wishes. To such demonstrations, councils in general are almost too prone to yield. Councilmen, too, are fully and constantly exposed to that neighborhood pressure from which most members of the legislature escape during the session. These informal expressions of public opinion are more effective negatively than positively; that is, it is easier to stop the council's taking a definite step than to cause it to take one. This helps to account for the fact that the referendum is used even less than the initiative. Detroit, which is one of the cities in which direct legislation figures most prominently, has never had a case of referendum by petition, although provision was made for it

[1] E. P. Oberholtzer, *The Referendum in America* (1911), 218 *et seq.*
[2] See Chap. X.

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in the charter of 1918.[1] The wider use of the initiative may also be ascribed to the ease with which it may be employed in the promotion of special causes and interests. Those who desire to forward municipal ownership, the single tax, higher salaries for policemen, pensions for municipal employees, etc., often find a short cut to their end by means of the initiative.[2]

The pros and cons of the initiative and referendum

Many of the arguments which are commonly urged for and against the initiative and referendum are obviously of no great significance. It is sometimes urged by the proponents of direct legislation that it has an educative influence on the people. It is very doubtful if, beyond a limited circle of intelligent and conscientious citizens, there is any real attempt to understand the questions submitted. The mass of voters make up their minds on propositions, as they do on candidates, at the suggestion of some organization, party leader, newspaper, or other trusted authority. They are much more often swayed by sentiment than by reason. On those questions which arouse the most popular interest and draw the largest number of votes, those which involve passion and prejudice, the attitude of most voters is predetermined. It is, to say the least, doubtful—to take an illustration from a state-wide referendum—if the average citizen of California was any better informed upon the issues involved in anti-alien land legislation after the election of 1920 than before, and this was a proposition which attracted one of the largest votes ever recorded. At any rate, it is safe to conclude that education, bought at the expense of unwise decisions of public questions, is too costly to be borne by a democracy. For the student of political science the real question is the success of the public in passing upon the questions submitted to it. It cannot be contested that the initiative and referendum furnish the

[1] Chap. II, Sec. 10.

[2] It is to be regretted that no statistical proof of the statements of this paragraph is possible. A long experience with city government in various parts of the country has convinced the author of their substantial accuracy.

people with a check upon their government. But how do they use that check?

Direct legislation not a substitute for a good city council

Before proceeding to any attempt to answer that question, note must be taken of the fact that there is inherent in the initiative and referendum a limitation which prevents their becoming a substitute for a good city council. Ordinarily, propositions are submitted in such a form that only a "yes" or "no" answer is possible. There is no possibility of compromise or adjustment. The voter frequently must be prepared either to vote against measures, the principle of which he favors, or to swallow detailed provisions of which he does not approve. Alternative propositions are sometimes submitted, and there is room for some extension of this procedure. There is, however, no possibility of direct legislation ever attaining any real flexibility. The fact remains that direct legislation is too unwieldy to be employed in the multitude of everyday affairs which concern a city, and that it is not a sufficiently delicate and discriminating instrument for the decision of intricate questions. There can be no doubt that the people themselves realize this fact; for, while they vote readily on the broader questions of policy, many of them refuse to try to make up their minds on the more difficult, detailed questions which come before them. The processes of direct legislation cannot possibly be so perfected as to enable it to take the place of a representative legislative body. Even its best friends feel that its application should be confined, as far as may be, to the decision of broad and general questions of policy.

Propositions voted up or down by minorities

The strongest argument of the opponents of direct legislation is that, with few exceptions, so few electors take the trouble to vote on propositions that the decisions of direct legislation are minority decisions. The number of votes cast, even on the most interesting propositions, is almost invariably less than that cast for electing officers at the same election. The extent of the difference,

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however, is often exaggerated. In a study of ninety-five propositions, voted on in twenty-one cities in 1921-22, the former was found to be 27.9 percent less than the latter.[1] Detroit offers figures slightly more encouraging. In seven elections, from 1918 to 1924, the average vote on propositions was 84.6 percent of the total number of persons voting, but only 45.9 percent of the registered vote. Comparing the vote of the successful candidate for mayor of Detroit in five elections with the average winning vote on propositions at the same elections, the latter appears to be 93.8 percent of the former.[2] A vote which is large enough to elect a mayor ought to be large enough to carry a proposition. The real difficulty is that neither the vote for officers or for propositions is large enough. No purely municipal election in Detroit since 1918 has attracted more than 58.5 percent of the registered vote, and, except in presidential years, the registration is light. This raises again the question discussed elsewhere, as to whether those who do vote faithfully represent those who do not.[3] It may be fairly said, however, that when the majority is large, it would rarely, if ever, have been changed by an increase in the total vote. Since all municipal government is minority government, in the sense employed in this paragraph, there is no occasion for peculiar alarm that propositions are decided by even somewhat smaller minorities.

Results of the initiative and referendum

To attempt to characterize, as good or bad, the legislation adopted by the initiative is simply futile. Comparison without a common measure of value is impossible, and a piece of legislation which seems good to one man is an anathema to the next. Ordinances passed by direct methods seem no better or worse than those

[1] E. L. Shoup, "The Initiative and Referendum in Thirty-six American Cities in the Years 1921-22," *National Municipal Review*, XII, 610-615 (October, 1923).

[2] *Public Business, op. cit.*

[3] See Chap. XIV.

passed by representative bodies. There are some rather obvious tendencies of the voters, which may be noted. They are rarely inclined to radicalism in extending the scope of city activities into the field of private business. They have an almost invincible objection to an increase of tax rates. On the other hand, they are free enough to vote for improvements, if the burden is to be shifted to the future by means of bond issues. Indeed, the requirement of popular approval for bond issues has scarcely served as a check on municipal extravagance. Examination of numerous propositions has failed to show any other tendencies except that toward an average legislative product. Direct legislation has, in this respect, proved a disappointment to both its friends and its enemies. It certainly has not brought with it that disaster which the latter predicted. On the contrary, there has been a great improvement in the quality of municipal government since the general introduction of the initiative and referendum. It has fallen far short of the rosy dreams of its early advocates. There is nothing in the constructive product of direct legislation to sustain or condemn it as a governmental device. Its negative results may have been more serviceable. No one can ever say with certainty how many councilmanic tricks have not been played, or how much graft has not been practised, because of the referendum. Why should a corporation buy a council to defy public opinion, if the measure is to go to the people anyway? How often has a council, faced with a duty, done it more promptly and with a better grace, because of the power of the people to do it themselves, by the initiative? There can be no definite answer to these questions. It is a reasonable conclusion, however, that the initiative and referendum have a value as checks upon the possible mischievous tendencies of the city council. Like the parental rod, they are most valuable when used least. They have undoubtedly played an important part in inducing the

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public to sacrifice the old checks and balances and adopt forms of city government in which power and responsibility are concentrated. Commissions, managers and powerful mayors would never have won popular approval without the establishment of new devices for popular control of government. This has been the greatest service of the initiative and referendum.

The recall

There was inserted into the Los Angeles charter in 1903 [1] a novel provision intended to make elective officers continuously, instead of periodically, responsible to their constituents. This new device was labeled the "recall" and bore some faint resemblance to an institution of the Swiss canton of Schaffhausen and to the power of the American states under the Articles of Confederation to change their representatives in the Congress. To all intents and purposes, however, it was an original creation. It provided that, on petition of electors equal in number to twenty-five percent of the vote cast for all candidates for the office in question at the last election, a recall election should be ordered. At this election, the person sought to be recalled should, unless he requested otherwise in writing, be a candidate without further action on his part. Other candidates were to be nominated by petition and the candidate (including the incumbent) receiving the plurality of votes at the election was to hold the office for the balance of the term. With some variations in procedure,[2] the recall spread like wildfire among states and cities. It became about 1910 the great battle-ground of progressives and conservatives, its application to the judiciary being resisted with special earnestness. It was feared by its opponents that

[1] At the instigation of Dr. John R. Haynes, who deserves whatever credit there may be in having originated the recall as a practical measure in American government. He claims, undoubtedly correctly, that he had at that time never heard of the "recall" in the Swiss cantons.

[2] The most common is to provide for a separate vote on the question "Shall the incumbent be recalled?" Candidates for the vacancy are voted for on the same ballot, but without effect unless a majority is cast for the recall proposition.

it would change the whole character of our government—that, in place of "representatives" using their best judgment in the public interest, our elected officers would become mere "delegates", subservient to every popular whim. Its friends, on the other hand, prophesied that it would prevent those betrayals of public confidence which had all too frequently disgraced our so-called representative bodies.

Extent of its adoption among cities

Most of the literature on the subject, and it is extensive, deals with the recall as an institution of state government. Its actual use has been confined, however, almost altogether to local areas. Even there it has not been employed extensively. No accurate estimate of the number of cities in which it exists is possible. Fifteen states [1] have provided for the recall in all their cities. Sixteen other states have provided for it in certain cities, generally in connection with the commission or manager plan of government. In the fifteen states above referred to there are 820 cities of over 2,500 inhabitants. Individual cities in other states would probably not raise the total to much more than 1,000. The recall, like the initiative and referendum, has been a common accompaniment of the commission plan and manager plan, about eighty percent of such cities having provided for it.[2] It is usually applied to all elective officers of the city, and only to elective officers. In a few instances some appointive officers fall within its scope, as the city manager in Dayton and Long Beach. It is generally conceded that this is an unwarranted extension of the recall principle.

Extent of its use

The extent of the use of the recall is still more difficult to determine. No record is kept of recall elections except by the cities themselves, and no one has ever undertaken

[1] Arizona, California, Colorado, Idaho, Illinois, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Dakota, Oregon, Washington, and Wisconsin.

[2] See R. T. Crane, *Digest of City Manager Charters*, and C. F. Taylor, "Municipal Initiative, Referendum, and Recall in Practice," *National Municipal Review*, III, 693-701 (October, 1914).

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to investigate all of them. A questionnaire directed to 149 manager plan cities known to have the recall elicited 121 replies. These 121 reported twenty recall elections in seventeen cities. A diligent search of all articles and notices concerning recall elections in numerous periodicals, especially those devoted to municipal government, disclosed 52 more cities in which the recall had been used.[1] It is probably safe to say that not many more than 100 recall elections have occurred in American cities. They are occurring no more frequently, probably less frequently, today than ten years ago. The incumbent is actually removed as a result of somewhere between one-half and two-thirds of the recall elections held. In the manager plan cities referred to, twenty elections produced seven recalls; the fifty-two other elections noted produced twenty-eight. This latter figure is probably larger in relation to the number of elections than it would be, if complete data concerning all recall elections were available, because of the greater likelihood of extensive press notice in the case of successful elections.

The results of the recall

Compared with the number of officers liable to recall, multiplied by the years the recall has stood part of each city charter—"officer years" if you wish to call them so—, the number of recalls has been insignificant. There is no authentic test which can be applied to a particular recall to determine whether it has been a good or bad thing. Excellent officials have been recalled by the organized activity of a disgruntled faction, as happened in the case of City Manager Hewes of Long Beach. Grafters have been driven from office as in the first recall in Los Angeles. It may be safely set down as fact that the popular judgment in a recall election is no better than in any other election. It is a reasonable conclusion, therefore, that the few actual recalls have, as a whole,

[1] J. O. Garber, *Use of the Recall in American Cities*, Bureau of Government, University of Michigan, Bulletin No. 5 (1926).

neither benefited nor hurt city government. Such effect as the recall has had must be sought in the possible deterrent influence its mere existence exercises. Long acquaintance with numerous mayors, councilmen and other elective city officers justifies the statement that few, if any, of them worry much about the recall. If one is the kind of person who does worry about it, fear of the recall is just as apt to deter from good as from evil conduct. The recall is an institution of small value. Its worth lies almost exclusively in the feeling of confidence which it inspires in the public. In this way, it has had somewhat to do, along with the initiative and referendum, in reconciling the people to the abolition of the old checks and balances.[1]

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[1] See Chap. XII.

CHAPTER XVII

THE PERFECTION OF ADMINISTRATION

The importance of administration

GREAT as has been the progress of the past forty years on what may be called the political side of municipal government, it has actually been surpassed by that which has been made in the field of administration. It is to administration that the efforts of reform agencies are now chiefly directed. Under their stimulation, the advance is continuous and rapid. Although the detailed discussion of administration organization and methods is left to another volume of this series,[1] some treatment of the subject here is essential to an understanding of the present status of municipal government in general. For it is through administration that the policies and ideals of the political branches of the city government are translated into action. It is the administration which actually patrols the streets, builds the sewers, lays out the parks, quarantines the infectious, manages the schools, collects the taxes. Whether the public investment in the city actually yields dividends of satisfaction is largely in the hands of the administrators. In other words, the measure of good government is to be found in the achievement of the administration.

The scope of administration

Something has already been said of the rapidly multiplying functions of the city—the result of scientific progress and expanding social ideals.[2] The services which cities render today can be summarized under the following heads:

1. *Safety*—including police and fire protection.
2. *Works*—including the construction, maintenance,

[1] L. D. Upson, *The Practice of Municipal Administration* (1926).
[2] See Chap. III.

and cleaning of streets, the construction and maintenance of sewers, sewage disposal, garbage collection and disposal, and in general the construction of all public works and buildings and the care of city property not under the jurisdiction of a particular department.

3. *Utilities*—including the maintenance and operation of all municipal utilities, such as water supply, electric plants, gas plants, etc.
4. *Welfare*—including the protection of public health, the maintenance and operation of public charities, and the administration of parks and playgrounds.
5. *Justice*—including the activities of the municipal courts, and the conduct of jails, reformatories, probation systems, etc.
6. *Education*—including the management of day and evening schools, public libraries, public lecture courses, etc.
7. *Law*—including legal advice to every department of the city government and representation of the departments before the courts.
8. *Civil service*—including the selection of personnel and the making and enforcement of rules regulating promotions, demotions, discipline, etc., for the employees of the city.
9. *Finance*—including the assessment of property for taxation, the collection of taxes, the custody of public moneys, the administration of the debt service, the purchase of supplies, the control of expenditures, and the maintenance of accounts and cost records.

Complexity of the problem of administration

The above outline can make no pretense to completeness of detail, but it will serve to indicate in a general way the extent and variety of the things which fall within the scope of municipal administration.[1] Not only

[1] The first six heads relate to what, in Chap. III, were called external functions; the last three, to internal functions.

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does the administration touch the life of the community at all the points indicated, but within any one service the kinds of business which the administration must transact are legion. If the service of fire protection be taken as an example, it will be found that the first need of the service is the recruiting, drilling, and disciplining of a body of firemen. Then there must be fire-fighting equipment. This equipment is partly vehicular, such as pumping engines, hose carts, ladder trucks, service trucks, chemical engines. The operation of this apparatus means garages, repair shops, gasoline, tires, and soda (for the chemical trucks). There must be, also, hose of various kinds, ladders, axes, uniforms, rubber boots, rubber coats, helmets, gloves, and gas masks. Men and apparatus must be provided with shelter, which means fire houses, equipped with dormitories, gymnasiums, and reading rooms. These must be furnished and provided with bed linen, blankets, towels, soap, matches, and other conveniences for living. Fire houses must be lighted, heated, and repaired. Finally, there must be a fire alarm system reaching every part of the city with its own wires, besides an extension telephone system. These are but the minimum essentials of a fire department. It is obvious that the task of administering this one service is a business enterprise of considerable complexity. Multiply this by twenty, and the product will approximate the complexity of a complete municipal administration.

Relation of administration to the political branches of the city government

One of the chief problems of administrative organization is to secure to the people or their representatives some control over this vast apparatus of administration without destroying its efficiency by making its personnel dependent on the oscillations of politics. In a democracy the people would seem to be entitled to decide what kind of government they want. This right is only partially secured by the establishment of our elective legislature of today, or city council. There are many questions of administrative policy which cannot be determined by

legislation as such. Among them, the most important are those matters which are concerned with the attitude of the administration toward the treatment of the public or the performance of particular duties. There is no method by which a city ordinance can enforce courtesy or consideration on the part of employees or determine their zeal in enforcing regulations. A park may be made a place of carefully preserved beauty for those who wish to drive through its ordered ways or a genuine play-place for the people, all within the limits of the legal duty of the park department. The only way in which the administration can be effectively controlled is by administrative directions supported by power of administrative discipline. These powers may be given to the council, or to the mayor, exclusively; they may be shared by the mayor, the council, and other elective officers in any conceivable combination; or they may be exercised by a manager who is himself under the control of the council. The direct election of numerous administrative officers by the people has proved futile as a means of democratic control, the people taking too little interest in the selection of these officers to exercise any real power of choice with regard to them. The diffusion of administrative authority between mayors, council committees, and other elective officers has been proved confusing to the people and preventive of effective responsibility to them. Experience has taught very emphatically that in concentration of power over, and responsibility for, the conduct of administration lies the only possibility of actual democratic control. At the same time, administration could best be protected from politics, in the bad sense of the term, by cutting down to the smallest number possible the points at which it is touched by the political side of the city government. Simplicity in organization makes always for definiteness of responsibility. The best results in this country have been accomplished in those cities which have concentrated direct

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administrative authority in a single officer, be he mayor or manager, leaving to the council only such power over the administration as it may exercise by making general regulations and settling the budget.

Department organization

Even in small cities, it is essential that the administrative service be departmentalized. Some discussion has already been had of the principles which should determine the number of departments.[1] There should not be so many that the department heads cannot constitute a workable cabinet for the chief executor. Within this limit the number is to be determined by a balance between the desirability of keeping down overhead expense, uniting similar and separating dissimilar services, and securing administrative units of manageable size. Something, also, has already been said of the relative merits of the individual and collegial department head.[2] In general, the individual head is to be approved except where considerations peculiar to the department or the locality demand the presence of a board. The present tendency is toward the individual head and to the reduction of boards, where retained, to merely advisory functions. There will, however, continue to be a large field of activity for boards in city administration. Desirable as is the professionalization of administration, it cannot with success be wholly professionalized. Experts are essential to good city government, but that does not mean that they should be left entirely without the restraint of lay associations. The expert is often so over-developed in his specialty that he cannot justly comprehend its relations to the administration as a whole. The professional civil servant is apt, too, to lose sight of the end in his devotion to methods and procedures. At present it is only a small fraction of the decisions which must be made daily in the administration of any considerable city that actually receive, or can

[1] See Chap. XI.
[2] *Ibid.*

receive, the attention of the council, mayor, or manager. Lay influence, if it is to be effective, must be introduced lower down, in connection with departmental administration. If schools were run by schoolmen, libraries by librarians, parks by landscape architects, health departments by "doctors of public health", with only such lay influence as could filter down to them through an elective mayor or council, there would be real danger of a distressing formalism and inhumanity in their administration. The popularization of administration by the liberal introduction into it of gratuitous lay service has been most scientifically worked out in Prussian cities. Laymen appear on the Magistrat—the body endowed with the genuine executive authority. In the care of the indigent and many other fields of administration, wide use is made of *Deputationen,* or mixed commissions of laymen and professionals. The government of Greater Berlin [1] affords remarkable examples of minute provision for lay representation, not merely in the governing body, but in administration itself. In England each department is headed by a council committee under whom the chief professional officer works. We need not be ashamed of the presence of school boards, library boards, health boards, park boards, etc., in our cities. More often than not they are justifiable attempts to moderate the possibly excessive zeal of the experts. Some of the most important services rendered by our cities—playgrounds are a good example—have grown up through the voluntary effort of small groups of good citizens. Such people have willingly served on a board created to administer their hobby. Traditions of the highest kind often surround the activities of such boards. Ruthlessly to tear them down in the interest of some scheme of administration uniformity is folly. On the other hand, it must not be forgotten that boards, in general, have been proved to make for irresponsibility

[1] See Chap. XVIII.

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and indecision. They should have no place in the management of the great departments where the temptations of politics are most prevalent.

Divisions of the department

In any well organized administrative system departments are systematically divided into divisions or bureaus. The number of such divisions depends, of course, upon the work of the department. It is essential, however, to good administration that there be a hierarchical arrangement of the authorities in the department so that responsibility for all its activities will ultimately rest on the department head.

Police administration

Police administration presents many peculiar difficulties. It is here that the board plan has failed most disastrously. A police department naturally demands the promptitude and energy which only an individual head can secure. It is no place for divided councils and irresponsibility. On the other hand, the management of police affairs exclusively by professional policemen is fraught with unusual danger. For one thing policemen —even more than other professional civil-servants—are apt to develop an attitude of mind altogether too inconsiderate of the rights of the private citizen. For another, the customary methods of recruiting police forces, taken together with the general attractiveness of a police career, bring it to pass that in only rare instances are men developed in the service capable of assuming the great responsibility of directing a police department. Most authorities, therefore, agree that the direction of the police department should be entrusted to a layman. In small cities the mayor or manager himself may assume this task, or a commissioner appointed by the governor. In most of the larger cities there is a police commissioner, not a product of the force, but some one appointed by the mayor from private life.[1]

Under the commission plan of government, one of the

[1] In Boston, Baltimore, and Kansas City the police are under the command of a commissioner.

members of the commission is almost invariably commissioner of public safety, and as such responsible for the police, fire, and sometimes health, departments. In some other cities there is an appointive director of public safety with similar power. Immediately below the lay head comes the chief, who is a professional policeman and in direct charge of its purely police activities. Below him there is a more or less extensive hierarchy of captains, lieutenants, sergeants, roundsmen, etc.[1]

The great majority of the rank and file of the department are classed as patrolmen. To facilitate the task of patrolling the streets, larger cities are divided into districts, or precincts, in each of which is a police station to which is attached an appropriate portion of the force. Special bureaus within the department are devoted to the detection of crime, identification of criminals, suppression of vice, regulation of traffic, problems of women and girls, etc. It is in the work of these bureaus that the great advances in police methods have been made. Aside from the use of automobiles in patrolling outlying districts and the extensive employment of electric signal devices, patrolling is carried on much as it was fifty years ago. On the other hand, the finger-print method has made it almost impossible for a criminal successfully to deny his identity; traffic regulation has become an elaborate art; the service of women police has been developed, to the great advantage of public morals. American police forces, however, labor under some handicaps as contrasted with those of European cities. The most important of these are: (1) the shifting character of our city population, and (2) the absence of those detailed records of each individual and his movements which are maintained by the authorities on the Continent. These facts should be borne in mind in considering the causes of the high rate of criminality in our cities.

The same considerations which dictate the advisability

[1] Police terminology varies somewhat from city to city.

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The fire department

of a layman as ultimate head of the police department apply with nearly equal force to the fire department. The relations of the latter to the public are obviously more simple. On the other hand, the maintenance of discipline is an even more difficult problem with firemen than policemen. In the nature of things, firemen are idle about seven-eighths of the time, even after all possible ingenuity has been exhausted in inventing things for them to do. They have all too much time for quarreling and the concoction of mischief. An "outsider" can often deal with the jealousy and bad blood which such a situation engenders better than can one who has grown up in the department. Furthermore, the purchase of mechanical and other equipment plays a much larger part in fire than in police administration. There is, of course, an obvious convenience in cities of moderate size in having one lay head for both departments. In larger cities, the great size of the two departments and the dissimilarity of their work usually lead to their complete separation. The success of a fire department depends upon two factors, *i.e.*, ample mechanical equipment and a well disciplined and ably directed personnel. In the actual direction of the department in the extinguishing of fire the lay head takes no part—certainly not if he is wise. The command of the chief, like that of a general in the field, must be absolute if good results are to be secured.

The fire department is generally responsible for enforcing the ordinances for the prevention of fire. Part of the time of its members is occupied in inspecting buildings, causing the removal of inflammable refuse, seeing that proper exits, fire escapes, etc., are maintained. In spite of the fact that we have carried the technical perfection of fire apparatus to an extraordinary height, and that we have much the largest and most efficient bodies of firemen in the world, we have much greater fire losses than those which occur in Europe. This is due

to two causes, the prevalence of wooden construction and the careless habits of the American people.

Public works administration

The term "public works" is most commonly used to describe a group of activities apparently not closely related. The planning and construction of streets, bridges, sewers, buildings, etc., constitutes one side of the work, while street and sewer cleaning, garbage collection, and the operation of sewage and garbage disposal works are representative of the other. All these functions, however, have one very important characteristic in common, namely, they are naturally carried on under the direction of engineers. From the point of view of sound administrative organization, the manner of the execution of a function is of much more importance than its intrinsic nature. It is desirable to group functions which enlist the interest and require the abilities of the same board of directors. Public works is another field where the necessity for efficacious action and clear responsibility point to the desirability of a single head. He is most often an engineer; in the smaller cities it is almost absolutely essential that he should be an engineer.

The division of the department into bureaus is suggested by its varying functions. First there is a bureau of engineering which draws plans, prepares specifications and inspects the performance of construction work, whether undertaken directly by the city or let out by contract. This branch of the department likewise determines and records the lines and grades of streets, etc. Then come bureaus of street cleaning, street maintenance, sewer maintenance, garbage collection, and others. In very large cities it has often been found necessary to split the functions here grouped under public works into several independent departments, such as sewers, street cleaning, plant and structures, and the like.[1]

Progress in the field of public works has been the re-

[1] See list of New York City departments in Chap. XI.

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sult of a combination of scientific discovery and increased public demand. Street cleaning machinery and improved methods of sewage and garbage disposal are among the most important advances. These devices are of little significance, however, as compared with the results of a public opinion which demands that every building be connected with the sewer, that streets be swept, and that garbage be not left festering in the sun.

The contract system *v.* direct city action in public works

Most construction work undertaken by municipalities is let out to private contractors. In fact, most city charters require that all work costing above a certain amount [1] shall be made the subject of competitive bidding and let to the lowest and best bidder. There are certain great advantages in this contract method. In the first place, it enables the city to know in advance just how much the work is to cost.[2] This is peculiarly important in the case of a governmental authority working on a fixed budget. A municipality is not in a position to take risks which would be legitimate enough for a private enterprise. In the second place, it relieves the city of the necessity of maintaining an extensive organization for each of a number of kinds of construction work. As a matter of fact, the maintenance of such organizations is far beyond the bounds of financial feasibility except in the very largest cities. The other alternative is to build an organization for each emergency, obviously a matter of trouble and expense. Stress is sometimes laid on the opportunities for corruption and political favoritism in the direct purchase of labor and materials by the city. But these are at least balanced by the opportunities for corruption in the award and administration of contracts. There is little doubt that, aside from the blackmail which is sometimes exacted by the police, most of the corruption in American cities today relates to con-

[1] Usually a thousand dollars, but sometimes less.

[2] This does not represent an absolute certainty, because contractors sometimes bid too low and become bankrupt. Then unless they have put up a good bond for the faithful performance of the work, the city may have to finish it at increased expense.

tracts. There is sometimes undue influence, financial or political, on the council which opens the bids and awards the contract. There is much more frequently corruption of the inspectors who pass upon the quality of the contractor's work. On the whole, the contract system, honestly administered, is preferable to the direct construction of works by the city. The latter, however, is a workable alternative where contractors' figures are too high, or their guarantees of performance are unsatisfactory.

The administration of public utilities

Most municipalities own and operate at least one public utility. The most common of these is water supply, San Francisco being the last of our great cities to provide herself with a publicly-owned water system. Municipal electric light plants are not at all uncommon, especially among smaller cities, and several cities which do not attempt to sell current to private consumers provide for lighting their streets and public buildings. Gas is not at all frequently supplied by city enterprise; and only a handful of cities have gone into the street railway business. Aside from these major utilities, there are many cities which provide public markets, baths, cemeteries, and other services of the kind on something at least approximating a business basis. Public utilities are sometimes administered incidentally to the activities of some department, but where they are large it has usually been found desirable to give them an independent departmental status. Municipally owned utilities are in most states not subject to the control of state public utilities commissions.

The control of privately owned utilities

The public has so much at stake in the operation of the more essential utilities that every one recognizes that private enterprise cannot be permitted to have altogether its own way with regard to rates and the quality or extent of service. Most of the great public utilities are obliged to make use of the streets for tracks, pipes, or wires. The privilege of so doing is ordinarily

in the gift of the city by ordinance. Such ordinances are known as franchises, and a franchise once granted to the proprietors of a particular utility is usually taken to preclude a grant to a competing utility to use the same streets. The wastefulness of permitting a duplication of capital outlay on pipes, wire, etc., is so obvious that it has become axiomatic that public utilities must be monopolies. A franchise is, in effect, a contract between the city and the utility company, and the city council is free to write into it such conditions as it sees fit. Twenty or thirty years ago there was keen competition for franchises, and councils were all too often corrupted in the effort to secure them on favorable terms. Other political battles were fought over franchise questions, and a wise, self-protective franchise policy became one of the chief points on the program of municipal reform.

Franchises have now, however, become almost valueless as a means of controlling privately owned utilities. For one thing, they are by no means as much sought after as they were in the early years of the century. For another, many of the states have, in the exercise of their police power, conferred on state public utility commissions power to fix rates and determine the conditions of service of all privately owned utilities. The orders of the commission may at times override the terms of franchises. There can be no doubt that state regulation of this sort is a violation of the principle of home rule. On the other hand, utilities are much more efficiently regulated than was ever the case when the cities had the matter in their own hands. When a city endeavored to change rates fixed by a franchise it was met with the contention that it was violating its contract. If rates were not fixed by the franchise, it was called upon to establish in court that the new rates were reasonable—otherwise the constitutional prohibition against taking property without due process of law was violated. In order to prove the rates reasonable it was necessary to establish

the value of the company's property. This was always difficult, and where the utility company served several cities a task beyond the ability of any but a very large city. For these reasons it is probable, in spite of the resistance of some great cities like New York, that state regulation will soon wholly take the place of municipal regulation of privately owned utilities.

Welfare administration

In our analysis of municipal functions the term "welfare" is made to cover health, charities, and recreation (*e.g.*, parks and playgrounds). In many cities, some or all of these activities are treated as separate departments. There is, however, a common humanitarian purpose in all of them. Community advantage is their ultimate end; but their immediate objective is individual welfare through community effort. The connection between health and charities is peculiarly close. A very large proportion of indigence is caused by bad health. On the other hand, poverty and bad living and working conditions are productive of disease, especially of tuberculosis. The charity worker and the health authorities necessarily must coöperate to secure good results in such cases. It does little good, for example, to send a patient to a tuberculosis camp if on his discharge he is to go back to a dark bedroom and an airless workshop. It is futile to dole out charity to an ailing head of a family when a simple operation or a few visits to a clinic would make a new man of him. Public institutional care of the sick in hospitals and sanitariums, of course, stands exactly on the border line between charities and health administration. The necessity for sympathetic coöperation between these two services suggests at once the desirability of a common chief as the best means of coordinating their efforts. Whether or not his authority should be extended over parks and recreation is rather a question of local expediency. A single welfare director is the ideal.

At the head of the health service, whether it be a

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Health

bureau under the director of welfare or a separate department, is a health officer, or a board of health of which the health officer is the executive. In recent years the tendency has been toward the former arrangement. The health service has many functions of a police nature, such as quarantining contagious diseases, abating nuisances, and enforcing building and sanitary regulations. These require the promptness and vigor which are too often lacking in boards. On the other hand, the health service is charged with the duty of making, within the limits of laws and ordinances, many general regulations for the safety and good health of the community. There is real reason for believing that the health officer should at least consult a few qualified persons before he makes them. Further, when, in times of epidemic, it is necessary to make very drastic regulations, it stiffens the back of a health officer to have behind him the influence of a respectable body of advisers. These considerations strongly support the idea of an advisory board of health whom the health officer must consult, but whose advice he may follow or not, full responsibility for the conduct of the service being his. Fortunately, our universities are now turning out a supply of adequately trained men and women for the position of health officer. The curriculum of the courses in public health administration lies chiefly in the fields of medicine and sanitary engineering, with some reference to sociology and political science.

The greatest triumphs which have been won in recent years for municipal administration have been the achievements of the health service. The progress of preventive medicine has been prodigious. The old-time scourges—cholera, yellow-fever, smallpox, typhoid, diphtheria, etc.—have been altogether eliminated or reduced to a minor position in the morbidity records. The reduction in infant mortality, as a result of pure milk supplies, better instruction of ignorant mothers, and greatly improved control of children's diseases, has been

the chief element in raising the average duration of human life to fifty-five years. Further extension of the expectancy of life must come mostly from the instruction of individuals in right living. It is confidently stated by public health authorities that if everyone would live up to the best known rules of hygiene, the Biblical three score and ten would in fact become the normal span of human existence.

Charities

Charity administration is less easily subjected to rules than any other branch of municipal activity. At the outset, it is necessary to realize that the relation of the city to private charity is by no means uniform. The safest generalization which can be made on the topic is that the greater part of the city's poor are cared for by private organizations under more or less municipal supervision, usually less. Public outdoor relief [1] in the United States has been, on the whole, casual and political. The first attempts to coördinate charitable effort and to base the relief given upon some real study of the conditions to be relieved were the work of privately supported charity organization societies or associated charities. As time has gone on, some public authorities have imitated their methods, others have surrendered the field to them except for contributions to their support, while still others have sought to regulate them through charity commissions, directors of charity, and the like. The movement toward the regulation of private charities has been stimulated by the annoyance caused business men by the solicitations of friends by numerous alleged charitable agencies, the merits of which they were unable to determine. This has led to street ordinances forbidding solicitation by the representatives of any organization not recognized by the proper officer or commission, and to the creation of "Community Funds" collected in one drive and in which the recognized chari-

[1] A term used to distinguish assistance in the shape of money, clothing, food, medical care, etc., from relief furnished in institutions.

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ties—or most of them—share. The desirability of putting the whole confused, partially-worked-out scheme of charitable activities under the formative supervision of an expert director of welfare is obvious.

Parks and playgrounds

Parks and playgrounds are two of the activities of the modern city most frequently submitted to board administration. After the original outlay has been made for purchase of sites and development, park management is a simple matter compared with the direction of the police, fire, works, or health department. The provision of play places and the proper supervision of play, important as they are, call for relatively small organization. Besides, parks and playgrounds are subjects in which it is easy to interest beauty-loving or philanthropic citizens who would balk at taking part, even in a directing capacity, in the apprehension of criminals or the disposal of sewage. Behind the boards which have sprung up in many cities to supply recreation facilities is a noble tradition of service. Such boards respect the abilities of the experts they employ and know how to get the best results from their service. No one would contend that park and playground boards, especially the former, have never fallen into the hands of cheap politicians and corruptionists, but if boards are good anywhere they will work in connection with these services. It is scarcely three quarters of a century since the first large city park was laid out.[1] Today all our larger cities own splendid public domains. Playground development has been under way less than half of that time, and is by no means complete. But the necessity for easily accessible play spaces for every part of the city is now fully recognized, and their acquisition waits only on competition with other needs for a part of the city's spending power.

Unlike its colonial prototype, the American city of today has very little to do with the administration of justice. The courts are organized by state law and with

[1] Central Park in New York City.

The municipality and the administration of justice

very few exceptions—the cities which are co-terminous with counties and a few others—the city is not even a district for any but minor judicial purposes. Even where the city and county are one area, it can scarcely be said that the city government has anything to do with the principal trial courts. The superior court of San Francisco County, for example, is composed of judges directly elected by the people. The number of its judges and attendants, and the amounts of their salaries, are fixed by law. The judges perform their functions in entire independence of the government of the city and county. The only matter in which the latter has any discretion is in the kind of court-rooms it will provide. On the other hand, the city is practically always a unit for the administration of justice in minor civil and criminal cases, the city having been treated in this respect as coördinate with the town or township. Sometimes the justices of the township from which the city was formed continue to exercise jurisdiction within the city. Whether this be the case or not, practically every city charter provides for one or more municipal courts which, in addition to the ordinary powers of a justice's court, have exclusive authority in cases coming under city ordinances. The same court sometimes has civil and criminal jurisdiction, while in other cities separate courts are provided. The judges of municipal courts are usually elected by the people, but in some cities they are appointed by the mayor.

The sins of municipal courts are many and grievous. The Cleveland Crime Survey only stated circumstantially for that city what is already known to every one familiar with the situation in almost any other city of the country. Their weakness is due to (1) the popular election, short terms, and low salaries of the judges, and (2) procedural absurdities which prevent the doing of justice when the court is disposed to justice and furnish a tangle of technicalities behind which the court

may hide when it is not. The second of these causes of ill-doing is within the reach of the city as such, even in the most advanced home-rule states, while the first can be touched in but few. Many of our best informed citizens believe that state judicial systems should be reorganized in a way that will make all large cities special units of the system. Within these units, they contend, courts of the several grades should be organized with sufficient judges to transact the legal business which arises in the city. Something of the sort has been done for Detroit in the development of a Recorders Court, and in a few other cities, with good results; but only the merest beginning has been made. The matter of reform in procedure has been talked about, and that is all. Probably whatever is done toward court reform in cities will not much change the relation of the courts to the city government.

In the matter of corrections, as a rule, cities have scarcely more to do than in that of the administration of justice. Jails in which persons accused of crime are held pending trial are a part of the police system. Institutions for the confinement of convicted persons are maintained, for the most part, by the state and county. Detroit supports a house of correction which is entirely inadequate to take care of the persons who in the nature of things would be committed to it. With few exceptions, those who seek to improve correctional methods go straight to the state for necessary measures. What might be the result of putting more responsibility on the cities for the administration of justice and corrections is indicated by the progressive attitude of Detroit in the establishment of a psychiatric clinic attached to the Recorders Court and in the development of an admirable probation office.

Education, like justice, has been normally regarded as a state function. Although the area of the city has been made the unit for educational administration, the task

has in the great majority of instances been entrusted to an official group distinct from the city government proper and independent of it, or almost so. The school district in most states is a corporation separate and apart from the municipality. The governing body—schoolboard, school trustees, etc.—is usually elected by the people. Even where the school board is appointed by the mayor or manager, the term is long and members retire in rotation. Still more important, the activities of school boards are controlled by long and detailed statutes which put it beyond the power of the city government to have any influence on school policy. In some states the city council has power to alter the school budget, but seldom does it have the courage to do so. In most states, moreover, the city council or county board must levy the rate of taxation certified to it by the school board. It is important to note in this connection that many school boards spend almost, if not quite, as much money as the whole city government proper. There is little room for doubt that there is strong popular support for the independent status of the schools.

On the whole, school districts have been better administered than any other of our units of local government. The people elect a school board. The board select a superintendent, who, subject to their supervision and control, runs the school system. This is, in effect, the manager plan, with the advantage that the office of school superintendent has been thoroughly professionalized. No one in these days worries over a superintendent coming from out of town, or will tolerate an untrained man in such a position. School boards in general—there are lamentable exceptions—leave the technical management of the schools to the superintendent and teachers. The results are far from perfect, but impressively good on any reasonable basis of comparison. The public, therefore, is apt to have greater confidence in the school department than in the city government. It takes more

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interest in school elections than in city elections, which is both a cause and a result of good school management. It is willing to lavish money on the schools, in part because it wants the children to have the best in buildings, equipment, and instruction, but in no small degree because it has assurance that the school board will give it something like the worth of its money.

Justification of separate status of schools

It has been suggested by some enthusiasts for administrative consistency that the superintendent of schools be appointed directly by the mayor or manager. The difficulty with so doing is not that mayors or managers would not pick good superintendents, but that the popular element in school administration would be ill-supplied by an executive concerned with a hundred other aspects of city government. There is no department which touches the people so closely as a school department. Police protection, for example, may, in a sense, be said to be more *necessary* than schools; nevertheless, a good share of the population lives and dies without any personal contact with the police department. But the maintenance of an effective *liaison* between school and parent is essential. The common argument against additional elective officers does not apply in the case of school boards, for the people do take an interest in choosing them. The school department is exceptional, and it is best frankly to treat it so. It is perhaps logically inconsistent to urge the concentration of power and responsibility, and then attempt to justify elective school boards. They are, however, justifiable, in the material results they have achieved and in the sense of cordial confidence which characterizes the public's feeling for its schools.

City planning and planning commissions

The function of city planning is essentially legislative. It necessarily involves ordinance-making, and a large part of the work of city planning commissions is concerned with advising the council about such ordinances. These planning commissions are, however, administra-

tive agencies of some importance. They are sometimes wholly appointive, sometimes wholly ex officio, and sometimes partly the one and partly the other. The term city planning is a broad one. It covers every aspect of city growth. Cities in the past have grown, and in the present are growing, very largely without plan. The unwisdom of so doing is obvious. If such a simple thing as a dwelling house requires an architect's plan, a city, which is the most intricate of all human mechanisms, ought to be planned too. Its streets, transportation lines, and terminals should be constructed with a view to the most advantageous use of its site. Likewise each portion of the city should be set apart for that use which will best promote the interests of the whole community. It is the duty of the planning commissioners to prepare plans to effectuate these purposes. To do so, they employ expert city planners; and on the basis of the recommendations of the experts the commission presents to the council planning measures for its adoption. The ideal is the comprehensive planning ordinance, but at this writing Cincinnati is the only city which has adopted one. Most cities are satisfied with dealing with the subject piecemeal. The commonest type of ordinance is the so-called "zoning" ordinance, regulating by districts the height, area, and use of buildings.

Other duties of planning commissions

In many cities charter provisions require that all matters affecting the city plan shall be referred to the planning commission and that the council shall not act thereon until the commission has had an opportunity to give its opinion. It is common also to require the approval of the commission to be attached to the plats of new subdivisions before they can be filed for record. Another power, sometimes conferred on planning commissions and sometimes assigned to another body called the art jury or something similar,[1] is that of passing on the

[1] Most frequently, however, no one has the power.

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plans of all public structures or permanent embellishments of public grounds. Without such a power somewhere a city is apt to be given dreadful "works of art", which it has no decent means of refusing.

Legal advice

We now come to a series of departments which perform functions of the kind described in an earlier chapter as internal. No city administration could long run without legal advice and keep out of trouble. It may be regrettable, but it is a fact, that the powers and duties of city officials and the rights and liabilities of cities themselves, are, in part at least, concealed in ancient statutes, moldy court decisions, and the obscure language of current legislation, from which they can be unearthed only by the technical skill of the lawyer. The duty of advising the city council and all branches of the administration falls on an officer known as the city attorney, city solicitor, corporation council, etc. He represents the city in court; though his chief duty is to keep it—and its officials—out of court. In a number of cities too large to be negligible, this officer is still elected by the people. In most cities, however, he is elected by the council or appointed by the mayor or manager. In small cities he is a part-time officer—any attorney retained to give advice when needed. Indeed, it is not at all uncommon to find a single individual serving as attorney for several neighboring cities. In the large cities the city attorney must give all of his time, supplemented by the efforts of a corps of assistants, to the work. Formerly, special attorneys for particular departments were very common. They are much less so today, the tendency being to center the whole responsibility for legal advice in a department of law.

Personnel administration

The selection of personnel is another internal function of the highest importance. Attention has already been called to the beginnings of civil service reform.[1] In those days the motive was primarily to break the power

[1] See Chap. XVII.

of spoils in politics. For this purpose, all that was necessary was to deprive the appointing authority of his formerly unlimited discretion. This was done in the earlier acts by requiring appointments to be made from a list of the three highest candidates as determined by the civil service commission upon competitive examination.[1] With few exceptions, this is the procedure today. All of the more important cities of the country now fill the great numerical majority of their positions in this manner. In many cities, likewise,[2] the power of removal of persons appointed under the examination system is subject to the approval of the commission. Promotions, pay increases, and discipline, short of dismissal, are also usually regulated by it. Altogether, although the competitive principle is too often evaded, the spoils system has been dealt a deadly blow by these means.

Old type of examination

The removal of political pressure from its selection is not the only prerequisite of an entirely admirable municipal personnel. Good salaries and hope of advancement are essential if men of ability are to be attracted to it. These, of course, are conditions beyond the reach of a civil service commission. The traditional type of civil service examination in American cities was a written test in what the commission supposed to be the field of activity covered by the position. This was well enough so far as testing the fitness of the applicant for such positions as typist, copy clerk, or even bookkeeper, was concerned. It is obvious, however, that examining a candidate for the police force on the city ordinances, the rules of the department and the street plan of the city could not go very far toward determining his possession of the mental qualities of a good police officer. In other words, the old type of examination had no relation to ability to assume responsibility or exercise discretion. This defect discouraged the extension of the merit sys-

[1] The appointing officer might reject all three names for reasons assigned and demand a new list of three from the commission.

[2] See Chap. XI.

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tem to the higher grades of the civil service. At the same time, it justified evasion of the system where established, for it could be said with truth that any reasonably discreet appointing officer could make better appointments himself than the commission could make for him.

Improved type of examination

In the last few years some real progress has been made toward developing a type of examination which will reveal the capacity of the candidate for his job. No one in this country seems to be content with the English government's method of filling "first class clerkships" with crack university graduates on the theory that there is a much higher average of genuine ability among such men than among any other class of the population. We desire a more definitely selective process. The psychologists and the civil service commissions have sat down together to work out tests of vocational adaptability, initiative, judgment, and intelligence. Such tests are clearly still in the experimental stage, but the progress is continuous.[1]

The civil service commission

The typical civil service commission of ten years ago was a body of three or five persons, unsalaried, carrying on its duties with the aid of a paid secretary. This secretary was presumably a personnel expert, and on his shoulders fell the bulk of the work, but without the authority or responsibility. This sort of commission has been giving way in favor of one in which the personnel expert is himself the sole civil service commissioner or at least the head and only salaried member of the commission. All matters relative to examinations are exclusively in his hands; the associate commissioners, if there are any, are concerned only with the making of regulations and the determination of questions of discipline. In the ideal system the single expert commissioner is selected by a competitive examination given by a committee of such high character as to enlist general

[1] See the periodical *Public Personnel Studies*, published by the Institute for Government Research, Washington, D. C.

confidence. Practice lags, however, far behind this ideal. Another suggestion now strongly urged is that the associate commissioners be drawn from the civil service itself; for example, one representing the rank and file selected by themselves, and one the administration, appointed by the mayor or manager. To this proposition the National Civil Service Reform League offers vigorous opposition.

Administration of finance

Money may be the root of all evil, but it is beyond the peradventure of a doubt the root of municipal administration. Each administrative activity means the spending of money, and the question of its success or failure rests in the first instance on the sufficiency of the funds devoted to it. The collection of the city's revenue, the safe custody of the funds collected, the preparation of the budget, the auditing of claims, and the accounting for expenditure are all the work of the department of finance. In addition it sells bonds, maintains sinking funds, and sees to the payment of principal and interest.

Finance officers: (1) controller

At the head of the department of finance is the controller or auditor. His primary function is to pass upon the legality of each claim against the city. No money can be drawn from the city treasury without his approval. It would be impossible for him to know whether or not a given claim exceeded the appropriation for the purpose or the amount available in the appropriate fund, except by keeping an account of receipts and expenditures. This fact has made the controller the chief accounting officer of the city. If he does not keep the books of the city, they are kept under his direction and according to forms he prescribes in a division of accounts. Without attempting to take the reader into the technical details of accounting procedure, it should be said that the adoption of sound accounting methods is one of the most noteworthy items in the tale of municipal progress. Twenty years ago city bookkeeping showed little more than the flow of cash into and out of the city treasury

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The real financial condition of the city was a perpetual mystery because no record was made of what it had spent until the bill was paid. It requires no flight of fancy to see that this left all too much leeway for careless or thieving officials. Today, municipal accounting in the larger and many of the smaller cities of the country compares favorably with the best private business practice. The controller is sometimes appointed, but is more often elected by the people, with the idea that he will thus serve as a check on the mayor and council.

(2) the treasurer

There is always a city treasurer; in New York they call him chamberlain. It is his duty to keep the moneys of the city and pay them out on the order of the controller. If there are current balances or permanent surpluses to deposit in banks, he is usually responsible for so doing. Most of the technical duties in relation to bond issues are performed in his office. He is properly a subordinate of the controller, but in a great many cities he is elected on the same ticket with that officer.

(3) assessor, collector, purchasing agent

The first step in the raising of municipal revenue is the assessment of property for taxation. This task is sometimes performed by a county officer, but in many cities the duty falls on the assessor, who again is frequently an elective officer. Taxes must be collected; and although this function is frequently performed by the treasurer and his assistant, it is sometimes entrusted to a separate officer and the collector. A few years ago it was customary for each department to buy for itself, regardless of the other departments. At present many cities have purchasing agents who buy for all departments. This centralized purchasing has been productive of great economies. The purchasing agent is usually regarded as belonging to the department of finance. In many smaller cities the manager himself acts as agent.

The major part of the income of American cities is derived from the general property-tax—a tax laid ad

valorem on all property, real and personal.[1] In actual fact, most personal property escapes taxation, because it is hard to discover. Real property is always in evidence and is always assessed at some proportion of its value. The work of assessors is usually far from scientific. The tendency is to keep valuations as they are because changes involve trouble and criticism. The general property tax has been heartily condemned by the best authorities on taxation because of the escape of personal property and other inequalities in its administration. No one, however, has suggested a practical alternative for it. This statement will be excepted to by the advocates of the "single-tax", who would put all taxation on land, relieving buildings and other improvements from taxation. It would be impossible here to discuss at length the pros and cons of the single-tax. It is enough to say that the leading authorities on taxation are even more earnest and united against the single-tax than they are against the general property tax. We have the latter, and it does, with some difficulty and injustice, produce the all-essential revenue. Until convincing proof is offered that some other system will do better, it is the part of wisdom to make the best of what we have.

The next largest source of municipal revenue is that derived from the sale of public utility services. Most of this, however, goes for the maintenance and operation of the utilities and only a minor fraction counts as net revenue. Cities derive something, occasionally a great deal, from a variety of business taxes, licenses, etc. By far the largest single item of this kind, liquor licenses, went by the board with the adoption of prohibition. Fees charged in connection with certain small services, such as furnishing certified copies of ordinances, etc., add a small amount to the city's income. Gifts in the aggregate amount to a good deal, but they are seldom

[1] The subject of tax limitation is discussed in Chap. IX.

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available for current expenses. Grants in aid from the national and state governments constitute an appreciable addition to municipal revenue, but all are earmarked for particular purposes, chiefly education.

Municipal borrowing

Many of the larger expenditures of cities are provided for by borrowing. So ready, indeed, have cities been to borrow that in most states their borrowing capacity has been limited to a fixed proportion of their assessed valuation.[1] Many states also require a popular vote, frequently approval by a two-thirds majority, before a loan may be authorized. There has been a good deal of discussion of the relative merits of borrowing to finance improvements and what is called the "pay as you go method". The latter is cheaper in the long run. It is easier to ask the next generation to pay than to pay ourselves; but so doing leads to extravagance, a vice that is peculiarly obnoxious where the period of the loan outruns the life of the work for which it is made. Nevertheless, the fact remains that "pay as you go" often means "go without". In the case of essential works, if borrowing is the only means of getting them, it is folly not to borrow. At any rate, the total of city borrowings is prodigious, far exceeding the total indebtedness of the states. New York City's debt exceeds two billions. Municipalities sometimes borrow for short periods on notes, as when they borrow in February in anticipation of tax money due in May. Long term loans are always effected by means of interest-bearing bonds. The principal is paid either by setting up a sinking fund to which is appropriated each year a sum sufficient, with such interest as the fund earns, to meet the bonds at maturity, or by issuing the bonds in such form that a certain number of them fall due each year. Bonds are usually disposed of through bond houses, which in turn sell them to investors, but are sometimes sold by the

[1] Indiana entrusts the approval of municipal loans to a state commission.

city in small denominations over the counter. The rate of interest which must be allowed is determined by the market for bonds. The city must pay the rate necessary to attract investors. The sale of municipal bonds at less than par is usually forbidden by law; so that, if the rate fixed by the council proves too low, the only recourse is to start a new proceeding.

Special assessments

Certain municipal improvements have a direct effect on the value of property in the neighborhood. It is only fair that the property benefited should at least contribute to the cost of the improvement. Upon this fact is based the practice of special assessments. When a street is paved the property along the street is assessed, sometimes for the whole, sometimes for a portion of, the cost of the improvement. There is, of course, a provision of the national and state constitutions forbidding the taking of property without due process of law. Taxation proper does not come within the scope of this provision. But a special assessment is not taxation, because it is not general. Therefore, before a special assessment can be laid it is necessary to give the property owner a day in court—an opportunity to be heard. The procedure is often elaborate, but in all states and cities it includes a resolution by the council of intention to make the improvement, notice to the property owner, and an opportunity to protest. Large improvements are sometimes assessed over considerable districts, the rate of assessment varying with the distance from the improvement or the supposed degree of benefit. Some states limit assessment to a fixed proportion of the value of the piece of property assessed. In no city can an assessment for more than the value of the property be enforced, because it runs against the property, and is not a personal obligation of the owner. If the owner gives up the property he can avoid the assessment. Provision is always made for paying the assessment in annual instalments, usually ten in number; and the city

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ordinarily finances the work by the sale of its own bonds and recoups itself from the instalments.

Budget

Until within the last twenty years, the budget was almost unknown in American city government. It is now practically universal. According to the best practice, it is submitted by the chief executive to the council as his proposal for the financial support of the several activities of the city. In some cities it is prepared by a board of estimate. The relation of the budget to the power of the mayor or manager and the council has already been sufficiently discussed.[1] The detail of the budget is usually the work of the department of finance. It must contain sufficient comparative information to enable the council to act intelligently upon it. In its best form it presents, in parallel columns, such items as appropriations for one or more past years, appropriations for the current year, amounts expended for the current year, requests of the department heads, and others. It properly goes into very great detail as to the purposes for which appropriations are asked, grouping them as personal service, contractual service, supplies, outlays (expenditures for permanent structures and equipment), etc. Each item in the budget should correspond with an item in the system of accounts. It is customary to publish the budget, at least in abstract, and invite the public to come in and give the council the benefit of its opinions on it. The response on the part of the people is normally almost negligible. Figures bore them. It is only the employees who want their salaries raised, or groups interested in some particular appropriation, who accept the council's invitation. When the council is ready to pass the budget, an appropriation ordinance is prepared. This may either follow the detail of the budget or make lump sum appropriations for each department or service. The former practice is the rule in cities under the mayor and council form of gov-

[1] See Chap. XI.

ernment, because by this means the council can in a measure prescribe how the administration shall be conducted. The latter method is better suited to the manager plan where the council has direct control of the manager. Even there, however, it is not very common. With the appropriation ordinance passed, and signed by the mayor (if there be one), the administration is ready for its work.

REFERENCES

The whole subject of municipal administration is dealt with in detail in a companion volume in this series, namely, L. D. Upson, *The Practice of Municipal Administration* (1926). W. B. Munro, *Municipal Government and Administration* (1923), Vol. II, also covers the ground very satisfactorily. W. Anderson, *American City Government* (1925), covers finance, civil service, and other topics; and C. C. Maxey, *An Outline of Municipal Government* (1924), deals rather more briefly and superficially with the whole subject. Reed and Webbink, *Documents* (1926), contains the civil service provisions of the Dayton charter, the rules of the Chicago Civil Service Commission, an extract from the Cleveland budget and appropriation ordinance for 1926, and the administrative organization and salary ordinances of Spokane.

CHAPTER XVIII

THE GOVERNMENT OF METROPOLITAN AREAS

City growth and metropolitan areas

THE causes of urban growth operate quite independently of the political boundaries of cities. State, and even national, boundary lines have proved no very serious bar to the spread of city populations. While there has been a general tendency for growing cities to expand the area of their governmental authority by annexation, this process always proceeds intermittently, in some cities does not proceed at all, and almost always lags behind the physical expansion of the community. Indeed, it appears as if, in the case of many of our largest cities, there is no hope of annexation even approximately catching up with population. The city, therefore, in the sense of a body of people centered on the port, the stream, the railroad junction, on which its economic prosperity depends, is often a very different thing from the municipal corporation which gives its name to the aggregation. Probably the most extreme example is to be found in the great Belgian city of Brussels. The commune of that name has 215,145 inhabitants, while the "agglomeration," *i.e.*, the continuous urban development in and around the old city, consisting of Brussels and fourteen additional communes, has a population of 808,333 inhabitants.[1] A simliar, if less exaggerated, relation exists between every great city and its suburbs, except where recent annexations, like those incident to the formation of Greater Berlin in 1920, have temporarily absorbed the latter. London's "Outer Ring" had, in 1921, a population of nearly three million. The "banlieu" of Paris, in

[1] Population as of December 31, 1923. From a memorandum furnished by the secretary of the Commune of Brussels, Prof. Maurice Vauthier.

the same year, was peopled by 1,505,219. Nearly two and one-half million people live within ten miles of the boundaries of New York; Pittsburgh, with a population of 588,343, has within the same distance of its limits 628,121 more; while Boston supplies our nearest approximation to the Brussels situation, with 748,060 inside the city and 1,054,260 in the ten-mile zone outside. The existence of a metropolitan area, distinct from the city politically but joined to it physically, economically, and to a certain extent socially, is characteristic of most of the world's great urban centres.[1]

The metropolitan problem

The existence of a metropolitan area means the presence of special metropolitan problems, in other words, problems common to the whole area which cannot satisfactorily be solved by the independent action of any one municipality. These problems relate chiefly to drainage, water supply, parks, electric lighting, police, health, education, and above all, city planning, transportation, traffic, and zoning. It is impossible to plan the development of an urban area, where, as has been seen, population multiplies fastest at the periphery, except by the concurrent action of the central and outlying municipalities.

[1] The areas and populations of certain great cities, together with the extent and population of the metropolitan areas dependent on them are as follows:

City	Area in Acres	Population	Area of Metropolitan District, Incl. City	Population
New York	191,360	5,260,048	875,515	7,674,349
London	74,850	4,483,249	443,449	7,476,168
Berlin	216,890	3,804,048	(Recent annexations have included metropolitan area in city)	
Paris	19,279	2,906,472	118,400	4,411,691
Chicago	123,382	2,701,705	594,409	3,201,301
Boston	27,870	748,060	392,016	1,801,320
Pittsburgh	25,517	588,343	499,223	1,216,464
Brussels	2,689	215,145	25,115	808,333

It is apparent from these figures that London is, area for area, still the greatest urban center in the world, and that Paris has a long lead over Berlin for third place, with Chicago decidedly behind both.

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Each of several adjoining municipalities may, and sometimes does, have separate systems of street railways, but always at the cost of convenience for the traveling public and economy of operation. To be useful, rapid transit facilities must reach far out into the environs of the city with a unified service. Great public works, like water supplies and sewage disposal systems, can often be efficiently carried out only for the whole urban area. Flying thief and hurrying pestilence never hesitate at city boundaries. The varying financial capacity of the units of the metropolitan community is a frequent cause of embarrassment. A working-class suburb, for example, often has a large population and low property values. It finds difficulty in maintaining its streets, and its police and other services at the same standard with its wealthier neighbors. The equalization of governmental costs is, therefore, a demand which frequently arises in metropolitan circles. At the same time, a whole host of minor "border" questions are constantly coming up, for example, with regard to children living in one municipality and attending school in another, which are by no means insoluble, but are often productive of friction. Some or all of these problems call loudly for solution in every metropolitan district.

The primary solution: annexation

The most obvious method of resolving the difficulties just described is simple annexation of the territory concerned to the parent city. This has been the method most often followed in the past. It may be illustrated from the English policy with regard to the area of boroughs. The Municipal Corporations Act of 1834 included in each of the boroughs affected the "built up" territory adjacent to them. In passing upon subsequent annexation proposals, the Ministry of Health and Parliament have until recently followed the same policy, even against the opposition of the annexed regions. There came a point when the attitude of the locality could no longer be ignored. Little opposition is usually made to

annexation by the inhabitants of unincorporated territory or of poor villages unable to furnish the services expected of a city. We have seen, however, that cities grow after the manner of a wood—the wind-born seed of the parent grove springing up in favored spots to form new groves, which only after a lapse of years are merged in the greater forest. Where subsidiary centers of population have existed for a long time with an individual life of their own, especially if they have been competently handling their own municipal affairs, civic pride attaches to them and their institutions. The larger and older they grow, the stronger this pride becomes. Such communities almost invariably resist annexation and, if annexed against their will—as Allegheny was to Pittsburgh—they long remain the foci of particularist local sentiment.[1] The small city seldom comes in contact with such resistant elements in its growth. The outlying portions of a great metropolis are apt to contain many of them. In other words, while the metropolitan area of Boston, for example, is a physical and economic unity it is by no means a complete social unity. A metropolis is not an assemblage of individuals so much as a collection of communities in which individuals are already assembled. Any sound solution of the metropolitan problem must take into account these facts. Political scientists have long realized the error of ignoring the spontaneous emotional responses of the people, however irrational those responses may appear. So difficult is it to arouse the public to an interest in city affairs, that no opportunity should be lost for employing local patriotism in the service of local government.

Metropolitan consolidation

Most attempts at consolidation on a large scale have acknowledged this principle by recognizing in some manner the preëxisting units. This goes all the way from the preservation of old names in the administrative and

[1] The boroughs—there are some sixty-eight of them—lying about Pittsburgh have, for fifteen years, strenuously and successfully resisted that city's vigorous attempts to annex them.

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election districts into which the greater city is divided, as in Paris, to practical municipal federalism, as in London and Berlin. Chicago and Los Angeles are surprising examples of the extent to which pure and simple annexation may be carried. In both cases annexations on a large scale were made in advance of population growth. In acquiring their present areas of 123,382 and 234,037 acres respectively no local concessions were made, unless we count as such, in the case of Chicago, the retention of a number of anomalous, and sometimes conflicting, jurisdictions which had existed prior to absorption into the city.

Municipal centralization: Paris

Paris is now the largest city in the world with a completely centralized city government. It is also much the smallest in area of any of the very great cities, its 3,000,000 people being compressed into the compass of 19,279 acres. It is divided into twenty *arrondissements* (eight of which were formed from the territory annexed in 1860), and each *arrondissement* into four *quartiers*. These correspond in some measure to the ancient quarters of the city and the communes added in 1860. They differ, in consequence, very much as to both area and population. Each *quartier* elects one representative to the Paris council. The functions of this body are not materially different from those of other communal councils, except that the Paris council elects no *maire*, the powers and duties of that officer being divided between the Prefect of the Seine and the Prefect of Police, both officers of the central government. The former is also the prefect of the department in everything except matters of police. In view of the French law which permits the superior administrative authorities to write into the budget of a municipality provision for the maintenance of all the more essential services, and also the veto which the prefect possesses on almost every action of the communal council, it may readily be inferred that the position of the Paris council is a subordinate one. Its moral

influence, however, is considerable, and the fact that, in the sudden shifts of French politics, its majority may at any time be of the same political complexion as the majority in the Chamber of Deputies leads canny prefects to treat it with reasonable respect.

While the peculiar excellence of Paris administration is largely due to the activities of the highly qualified personnel of the "prefecture", there is a notable degree of deconcentration with regard to numerous functions. In each *arrondissement* there is a *maire* and from three to to five assistants (*adjoints*) appointed by the central government from among the citizens of the *arrondissement* and serving without pay. The *mairie,* or townhall, is a veritable center of *arrondissement* life. Here the young couples come for the ceremony of civil marriage, strangers to secure their *cartes d'identité,* property-owners and householders to file claims and declarations relative to direct taxes, the poor to make application for relief. Here also births and deaths are recorded, the register of voters prepared, and those liable to military service enrolled.[1] In the *mairie* is located a public library reading room, and in the management of these libraries, and in other matters of local administration, especially in poor relief and education, unpaid committees of citizens largely participate.[2] The Paris system, in short, affords a minimum of self-government to the people of the city, but concedes a good deal to local convenience and sentiment in the method of its administration. Subject to the criticism that it is fundamentally undemocratic, it is an excellent example of French skill in organization. The various authorities each have their logically appointed sphere of activity, and the whole machine operates with ease and precision.

The region outside the walls of Paris is now thickly

[1] A. Shaw, *Municipal Government in Continental Europe* (1906), 16, 32-35. See also Albert Lavallée, *Le Régime Administratif du Department de la Seine et de la Ville de Paris* (Paris, 1901), 91-94.

[2] W. B. Munro, *Government of European Cities* (1919), 99-100.

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Extra-communal problems of Paris

built up in almost every direction. Fully a million and a half persons, indeed, live outside the "walls" but within what may properly be called metropolitan Paris. The problems flowing from this circumstance seem, however, less acute than in other similar centers. This is accounted for in part by the close relation between the government of Paris and that of the Department of the Seine. The same Prefect of the Seine presides over both, and the Paris council, with a few added members, is the general council of the department. In the portions of the "banlieu" which spread into the neighboring Departments of *Seine et Oise* and *Seine et Marne* the high degree to which control of French local government has been confided to the central authorities apparently suffices to prevent confusion and conflict. The French law on communal organization makes ample provision for the joint action of two or more communes for the purpose of carrying out works of intercommunal utility by the creation of a *syndicat* or union of communes. These *syndicats* are governed by a committee to which each communal council elects two members who hold office as long as the council which elects them.[1] The city planning act of 1919[2] gives the prefect of a department power to initiate intercommunal conferences with a view to the formation of such *syndicats* of communes for the purpose of giving effect to plans relating to more than one commune. Similar provision is made for the management of works or institutions of utility to more than one department by inter-departmental conferences in which the council general is represented either by the Departmental Committee or a special committee.[3]

Municipal federalism: (1) London

The ancient City of London constituted an area of about one square mile on the northern bank of the Thames. When the population overflowed the walls and

[1] *Loi sur l'Organisation municipale* du 5 avril 1884, Art. 169-180. (Added to by *Loi sur les syndicats des communes* du 22 mars 1890).

[2] Passed March 14, 1919. *Bulletin des Lois*, 558.

[3] *Loi relative aux Conseils généraux* du 10 août 1871, Arts. 89-91.

spread over the adjacent country on both sides of the river, no attempt was made to extend its boundaries to keep pace with its growth into a metropolis. It still remains about as it was in medieval times. By the middle of the nineteenth century it was the center of a confusing mélange of cities, boroughs, parishes, and districts with a population of over 2,500,000.[1] The first attempt to bring order into this confusion was the creation of the Metropolitan Police District in 1829. It included all the territory, except the city, within a radius of fifteen miles from Charing Cross. Within this area the administration of police was entrusted directly to the Home Secretary. In 1855 the first common agency of self-government was established, a Metropolitan Board of Works, the members of which were elected by the authorities of the numerous local government units within its area. This area, as defined in the act of 1855, was identical with that employed by the Registrar General in making up the weekly "bills of mortality". No logical principle was evident in its selection but, speaking roughly, it included the continuously built-up portion of Greater London. Its population, according to the census of 1851, was 2,363,341 for an area of 74,850 acres, while the remainder of the Metropolitan Police District contained 368,599 acres and but 317,394 people. The legislation of 1855, aside from providing for the functions of the Board of Works, left untouched the areas and powers of the multitude of minor London authorities. The Local Government Act of 1888, which organized the system of administrative counties throughout England, made the area of the Metropolitan Board of Works into the Administrative County of London. For its government was provided the London County Council, which now consists of 124 councilors, elected every three years, two from each Parliamentary Division within the county and twenty

[1] Minutes of Evidence Taken Before the Royal Commission of London Government (1921-22), Part I, p. 88.

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aldermen chosen for terms of six years by the council. The Act of 1888 did not alter the constitution of the subordinate areas, but in 1899 they were consolidated into twenty-eight Metropolitan Boroughs, organized on a pattern nearly uniform with that of the provincial boroughs. The ancient City of London was left intact with its ancient constitution and boundaries.

Distribution of powers

In their organization and procedure, the County Council and Metropolitan Borough Councils do not differ materially from the corresponding local bodies in other parts of England. They are unique only in the distribution between them of the functions of urban government. The basic idea is that of municipal federalism. But in the actual ascription of powers to the central and local units no logical principle, or even approach to consistency, was observed. Some matters belong exclusively, or almost exclusively, to the County Council, as fire protection, care of lunatics, reformatories, education, and some licensing powers. The subject of drainage is divided between the county and borough councils on the perfectly understandable basis of main drains going to the one and local sewers to the other. In the domain of streets, however, confusion enters. Jurisdiction over street openings and improvements belongs to the county council, but the actual construction and maintenance of all streets except the Thames bridges and embankments is left to the boroughs. The powers of the latter in this regard cover the lighting and cleaning of streets, including refuse collection and disposal. The county council alone has power to operate tramways, but the boroughs, as "local road authorities", can veto—and have often done so—any projected tram line in their territory. In the field of public health, the authorities are even further jumbled. Venereal diseases, tuberculosis, and the care of the blind belong exclusively to the county council. The ordinary sort of medical and sanitary inspection and the abatement of nuisances is carried out by the boroughs

under the supervision of the county. Midwives are regulated by the county council, but maternity and child welfare in general are activities of the borough councils. Baths and washhouses are borough functions, while child-cleansing under the education acts is a duty of the county council. With regard to parks and open spaces, both sets of authorities have concurrent powers. The same is true of housing, except that the powers of the boroughs in this field cannot be exercised beyond their own limits. The building acts are carried out by the county council, but not altogether without the concurrence of the borough councils. Such powers as are exercised by any London authority concerning gas supply belong to the county council, but some of the boroughs maintain electric light plans, while other powers relating to this subject are shared by the county and borough councils. The complexity of the situation is further emphasized by the fact that the city corporation exercises, within the City of London, many of the powers carried out elsewhere in the county by the County Council.[1]

Effects of the London borough system

It is needless to say that such an arrangement has never produced satisfaction. The powers of the boroughs are, on the whole, of minor importance and have proved wholly insufficient to endow them with any popular interest. A former member of the British cabinet, who was at one time parliamentary secretary of the Local Government Board, puts it thus vigorously: "The miserable percentage of citizens which can be stimulated into voting for County Council candidates is never, as a rule, even halved by the still more miserable percentage that unwillingly shambles to the polls in the election of a London Borough Council."[2] He continues, "These London Borough Councils form a kind of nadir of British

[1] For an illuminating account of this subject, see the evidence of M. L. Gwyer, solicitor of the Ministry of Health, before the Royal Commission on London Government (1921). The more significant portions of his evidence in chief have been reprinted in Reed and Webbink, *Documents*, from the *Minutes of Evidence* taken before the Commission (1922).

[2] C. F. G. Masterman, *How England Is Governed* (1921), 133-134.

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municipal life."[1] Inevitably, not a little friction has arisen in the use of powers so ill-adjusted. The scheme is a veritable "apparatus of dislocation". The most striking illustration is to be found in the conflicts which have raged over the location of tramways. Another difficulty, quite apart from the distribution of powers, lies in the fact that Parliament, in forming the boroughs, followed the lines into which natural forces had been casting the social structure of London. The result is that some boroughs, like Poplar, have a very large percentage of very poor people, a low taxable valuation, and high tax rates, while other boroughs, like Kensington, have fewer people, higher property values, and lower rates. The problem of equalizing rates so that there may be a reasonable equality in municipal service and municipal burdens throughout the administrative county is an ever present vexation. Yet, in the course of the hearings held by the recent Royal Commission on London Government, it was repeatedly asserted by witnesses for the County Council and other authorities—and apparently accepted as axiomatic by the members of the commission—that a dual system of some sort is essential in the local government of a community as great as London.

The unsolved metropolitan problem

In the meantime, around the built-up area of 1855, population has multiplied at a tremendous rate until the so-called Outer Ring (within the Metropolitan Police District, but outside the administrative county) has a population of 3,000,000, while the area from which many thousands of commuters come daily to London to earn their bread stretches along the railway lines many miles further into the country. For two decades the population of the administrative county has been slowly declining, while the surrounding area has continued to grow with great rapidity. What was doubtless intended to be a comprehensive scheme of municipal federalism has obviously fallen far short of that result. The situation has

[1] C. F. G. Masterman, *How England Is Governed* (1921), 134.

not been met squarely, but resort has been had to special, or *ad hoc,* authorities whose jurisdiction extends over areas in no case identical with any other authority. "London", therefore, is an expression of differing signification. There are not only police London and postal London, areas in which departments of the central government perform their functions, but water London, drainage London, port London, electricity London, and traffic London. The principal *ad hoc* authorities exercising their powers within and without the administrative county are the Metropolitan Water Board, the Port Authority, the Thames and Lee Conservancy Boards, the London and Home Counties Advisory Traffic Committee. In addition, it should be mentioned that the County Council is the authority for a drainage area much larger than the administrative county, while the Corporation of the City is the Port Sanitary Authority. The County Council undertakes housing enterprises outside its own limits, and both the County Council and City Corporation maintain extensive parks outside their own boundaries.

Royal Commission on London Government 1921-23

No better illustration of the growing difficulty of extending to a metropolitan area even such a partial system of urban unification as is involved in municipal federalism can be found than in the results of the inquiry undertaken by the Royal Commission on London Government which was appointed, at the instance of the London County Council, October 24, 1921. Before this commission the County Council made some rather tentative proposals for the creation of a new central authority for London, with an area corresponding with the built-up portions of the metropolis and a margin for development in the immediate future. To this new authority it was proposed to assign, in addition to the functions of the London County Council, powers relating to water supply, wholesale markets, transport, roads and poor law. To local units very much larger than the present metropolitan boroughs would have been assigned, according to

this scheme, wider powers than are now exercised by the boroughs in relation to the building acts, education, poor law, and public health. No substantial changes were suggested in the traditional forms of organizations and procedure of the governing bodies of either the central or local units.

Here was a practical proposal to bring order out of chaos, with assurance to the poorer localities of relief from present high taxes by way of equalization of rates. Nevertheless, with one unimportant exception, the proposals of the County Council received the support of none of the local authorities concerned. Indeed, they were the subject of heated opposition by most of them. The witnesses evidenced a high degree of local consciousness and somewhat emphatically repudiated the idea that because men worked in London they are primarily Londoners. They defended the quality of their own administration and in general scouted the idea that there would be any improvement in the economy or efficiency of any of their present services by reason of their being performed in a larger area. No local witnesses were heard other than the councilors and officers of the counties, boroughs, etc., concerned. Whether or not they spoke authoritatively the opinion of their constituents remains a matter of some doubt. Concerning a similar situation in Brussels, an eminent Belgian scholar and politician [1] suggests that the ambition of politicians "adjusts itself well to the multiplication of municipal offices". It is probable that the sentiment of local patriotism beats more strongly in the hearts of the municipal politicians than in that of the ordinary citizen. Still an attitude so universally and so unqualifiedly assumed by men in office may be fairly concluded to be based on a genuine public opinion. In the final event, the commissioners found that they could not agree. Four of them joined in signing a

[1] M. Vauthier, formerly secretary of the Commune of Brussels, president of the Council of Administration of the University of Brussels.

report recommending the creation of a London and Home Counties Advisory Committee with somewhat vague functions relating to transport, town planning, housing, and main drainage. Two other members recommended in general terms the creation of a number of "county-boroughs" of considerable size and a directly or indirectly elected central authority to deal with main drainage, water supply, tramways, etc., while a third contingent of two recommended the establishment of a new, directly elected central authority with large powers, but with the maintenance of the autonomy of the *existing* local authorities. The net actual achievement was the creation by Parliament of a mildly powered advisory committee on traffic and cognate subjects.[1]

Municipal federalism: (2) Berlin

For many years before the World War, the population of Berlin had been spread over an area of which the municipality of that name was but the nucleus. The existence of common interests and problems was generally recognized, but no union was effected until 1911 and then only by compulsion. In that year a Prussian statute created a "Union" for the control of tramways and rapid transit lines and the acquisition of open spaces.[2] In the midst of the war, the municipalities voluntarily joined in the formation of the Greater Berlin Employment Registry Commission of 1917. War necessities likewise led to numerous unions of an emergency character, such as the Food Stuffs Union, the Fuel Union, the Horseflesh Supply Office, the Greater Berlin Housing Union, etc. While in this manner the way was being broken toward the creation of a greater city, there was increasing inconvenience from the conflicting problems of the vast number of local authorities. This was especially apparent in the matter of gas, water, electricity and sewer services, Berlin furnishing a first rate example of the "met-

[1] Royal Commission on London Government, *Minutes of Evidence* (1922), and *Report* (1923).

[2] Zweckverbandgesetz of July 19, 1911.

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ropolitan problem'' at its worst. There were seventeen waterworks, fifteen electric plants and forty-three gas plants serving Greater Berlin. Before pipes or wires could be laid on any large scale, negotiations must be undertaken with several authorities, which sometimes required years to complete. A somewhat extreme instance of the resulting confusion was the attempt of one municipality to divert the water supply of another.[1] In the field of housing the municipalities still possessed of land had no means with which to build, while Berlin itself, whose need of houses was excessive, had no land to build them on. By 1919 the population of Berlin was 1,907,471, while an almost exactly equal number dwelt in the neighboring communities. All these things made the creation of some competent central authority inevitable. Some of the suburban municipalities urged the retention of the existing municipalities while creating above them a federated city. Another, and perhaps more influential, view favored a centralized municipality. The act of 1920 was a compromise between these two opinions, but leaned more heavily upon the latter. It swept away the existing municipalities. It created twenty ''administrative districts'', six out of Berlin and fourteen from the eight cities, fifty-nine rural communes[3] and twenty-seven manorial precincts[4] which were made the subject of the merger. Each of these districts elects a council and is provided with an administrative organization. The act left, however, to the central authorities of the new city the final determination of what matters shall fall within the competence of the district governments. This would seem at first sight to point the way to ultimate if not immediate triumph of the principle of centralization. More closely viewed, however, it is clear that

[1] P. Wölbling, *Gesetz über die Bildung der neuen Stadtgemeinde Berlin*, Einleitung, 11.
[2] Stadtgemeinden.
[3] Landgemeinden.
[4] Gutsbezirke.

nothing more was intended than to do, as is generally done in European statutes, enact a general principal leaving the details to be worked out by some administrative authority. The only departure from the usual practice is that the authority is the government of the city instead of a department of the central government.

Central authorities

At the basis of the government of Berlin stands the municipal assembly (*Stadtverordnetenversammlung*). It consists of 225 members chosen at one time for a term of four years by the curious system of proportional representation described in a previous chapter.[1] The principle of proportional representation is also applied to the election by the Assembly of the *Magistrat*[2] which consists of not more than thirty members. These, as in other Prussian cities, are partly paid members chosen for twelve years and partly unpaid members, chosen for the term of the assembly.[3] The assembly also chooses an *Oberbürgermeister* and a *Bürgermeister*, who is in effect a deputy or assistant of the former. The functions of these authorities in Greater Berlin and their relation to one another are in no respect dissimilar to those which prevail in other Prussian cities.

District authorities: (1) assembly

The area of the city was divided by the act of 1920 into twenty administrative districts (*Verwaltungsbezirke*). Future alteration of district boundaries was left to joint resolution of the municipal assembly with the approval of the district assemblies concerned. The district assembly consists of the members of the municipal assembly from the district,[4] and of fifteen to forty-five persons chosen in the district by proportional representation at the same time as are members of the municipal assem-

[1] See Chap. XV.

[2] An untranslatable term, the closest rendering of which in English, "administrative board," is scarcely indicative of the functions involved.

[3] At present there are eighteen paid and twelve unpaid members.

[4] Where the election district (*Wahlkreis*) is made up of several administrative districts the municipal assembly apportions the members among them. Members of the assembly elected from the city-wide lists are also assigned to administrative districts.

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bly. The district assemblies, subject to the principles laid down by the municipal assembly and *Magistrat,* "act upon all affairs of the district".[1] Upon them also is conferred the "supervision of the administration of those municipal arrangements and institutions" of their respective districts "which are intended primarily to serve the interests of the administrative districts".[2] As a basis for the municipal budget, the district assembly prepares and submits, through the district board to the *Magistrat,* a report on the needs of these institutions and arrangements. Provision is further made that in the annual budget special estimates shall be adopted for district needs and assigned to the district to be executed. After all, this is but a vague definition of powers, typical of European law-making and in strong contrast with American practice. It is the apparent intention of the law to leave to the districts a considerable range of activities, subject to regulation and adjustment by the central authorities of the greater city. This position of control is further strengthened by the veto, which is given the *Magistrat* over the acts of the district assembly and other district authorities.[3]

(2) District board

The district is provided with a full complement of administrative authorities. The most important of these is the district board (*Bezirksamt*), which consists of seven members elected by the district assembly. The chairman, or local *Bürgermeister,* and his deputy are also designated by the district assembly.[4] The members of the district board are mostly salaried officers with twelve-year terms, but there may be unpaid members whose tenure is that of the Assembly which elects them. The district board is the executive authority of the district, an agency of the district assembly, with power to ap-

[1] *Ibid.*

[2] Law of April 27, 1920, Paragraph 22.

[3] An appeal may be taken from this veto to a board of arbitration made up of two persons chosen by the municipal assembly, two by the district assembly, and an umpire chosen by these four.

[4] First appointments to these offices were made by the *Magistrat.*

point its own officials, etc. It is also the agent of the *Magistrat* in administering any affairs which that body may entrust to it. On the other hand, the *Magistrat* must consult with the chairmen of all the district boards before it comes to a final decision on the budget plan, the division of administrative functions between the municipal and district authorities, and the exercise of the veto upon the acts of the latter. The district board is furthermore specifically charged with the duty of mediating between the district assembly and the municipal bodies.

Local districts

By concurrent resolution of the district assembly and district board, with the approval of the *Magistrat,* an administrative district may itself be divided into local districts (*Ortsbezirke*). At the head of each such district is a chairman and a deputy chosen by the district assembly for twelve years if salaried or four years if not. With the consent of the *Magistrat,* a local council, elected by the people, may also be established who, among other powers, possess the right to nominate candidates for local chairman. Thus is created a further tie between the people and the administration.

Conclusions

On the whole, the governmental system of Greater Berlin seems to be more one of deconcentration—*i.e.*, the localization and popularization of administration—than one of genuine municipal federalism. It is too early to render a definite judgment upon the degree of autonomous activity permitted to the administrative districts. If money spending is any guide, the needs recognized as purely local make up something less than half the total budget estimates. This means that the administrative districts are vastly more important relatively than the New York boroughs which spend but 7.4 percent of the current expense budget of the city.[1]

[1] Vienna has, since 1890, been divided into twenty-one districts corresponding to the communes which have from time to time been added to the city. These districts each elect, by proportional representation, a council of thirty members which in turn elects a district chairman and his deputy,

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A compromise system: New York

When the New York legislature of 1897, in adopting the Greater New York charter, created a municipality of then unprecedented dimensions, it felt the necessity of making some concessions to local sentiment. The result was a borough system which preserved to a certain extent the identity of the cities of New York and Brooklyn as the boroughs of Manhattan and Brooklyn respectively and threw the rest of the annexed communities into three well-defined groups—the Borough of Queens, embracing the territory on Long Island north and east of Brooklyn, the Borough of Bronx, lying between the Harlem River and the Westchester County line, and the Borough of Richmond, identical with Staten Island. The area and population of the five boroughs for 1920 were as follows:

	Area in Acres	*Population*
Manhattan	14,080	2,284,103
Brooklyn	26,240	2,018,356
Bronx	45,440	732,016
Queens	69,120	469,042
Richmond	36,480	116,531
Total	191,360	5,620,048

We have already discussed the extent to which executive authority and political leadership in Greater New York are concentrated in the mayor, and have established the point that the real municipal legislature is not the Board of Aldermen, but the Board of Estimate and Apportionment. There are no borough councils nor has the borough any independent powers of policy determination. The boroughs are exclusively local centers of administration. To the borough presidents are entrusted the duties of laying and constructing and repairing streets and sewers, the care of public buildings, and the

both for terms of five years. Unlike the corresponding officer in Berlin, the chairman is not an official, but a layman serving without pay. The autonomous powers of the district are not great. It is used as a unit in the general administration of the city. Members of the district bureau are appointed by the central authorities and are directly under their control. See J. A. Fairlie, *Essays in Municipal Administration* (1908), 316-329. The Law of November 10, 1920, under which Vienna is now governed, is to be found in *Landesgesetzblatt für Wien* for November 18, 1920.

enforcement of building regulations. Numerous incidental powers go with these functions, such as the control of projecting signs, permits to open the streets or to use them for other than street purposes, the inspection of passenger elevators, etc. In Queens and Richmond, the borough presidents are also in charge of street cleaning. The relative importance of the sphere of administration assigned to the borough presidents may be deduced from the fact that, out of a total operating city budget for 1925 [1] of $265,278,583.75, only $19,886,545.21 was for borough government. The importance of the borough as an administrative division, it is true, is somewhat enhanced by the fact that many of the centralized departments maintain offices in the boroughs and the "borough hall", like the Parisian *mairie,* is the point at which citizens most frequently come in contact with their municipal government.[2]

The real importance of the borough, however, is as a representative district. It will be remembered that each borough is represented in the Board of Estimate and Apportionment by its president, the presidents of the boroughs of Manhattan and Brooklyn having two votes each, while the other three have a single vote apiece. Of course, set off against them are the three officers elected at large, Mayor, Comptroller and President of the Board of Aldermen, with three votes apiece. In fact, however, the alignment in the Board of Estimate and Apportionment is rarely if ever between the district and at-large members. A borough president has a fair chance to make his vote count. In the early days of Greater New York there was some complaint of sectional combinations—a mayor and president of the Board of Aldermen being residents of one of the great boroughs to-

[1] Omitting appropriations for debt service and tax deficiencies, county government, and state taxes.

[2] The members of forty-six local school boards with advisory powers are appointed by the presidents of the boroughs in which each is located. Each borough is also divided into local improvement districts, the board of which consists of the aldermen from the district and the borough president.

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gether with the president of that borough controlling half the votes of the board—but these have passed away and there seems to be general satisfaction with the constitution of the body.[1] The peculiarly legislative character of the borough president has been intensified by the association with him of a Commissioner of Works whom he may appoint and remove at pleasure, and who discharges most of his administrative powers.

"*Ad hoc* authorities

It is, of course, possible, as has already been indicated, to provide for the needs of a metropolitan community more directly, and with less danger of arousing popular resistance, by the creation of a special authority to administer a particular service. This device has, in some form or other, been much more frequently employed than the cumbersome plan of municipal federalism. Such *ad hoc* authorities are divisible into several classes: first, those in which the authority is an agent of the central government; second, those in which it is the agent of the local authorities concerned; third, those in which the governing body is elected directly by the people of the district, and fourth, those in which the governing body is chosen in whole or in part by the users of the utility, or those most directly interested in the service rendered, without regard to place of residence.

(1) Agents of the central government

The classical example of the first is the Metropolitan Police District of London, where the authority is the Home Secretary himself. This exertion of central authority has given the metropolis an admirable police administration. It is to be justified, however, like the denial of self-government to the inhabitants of the District of Columbia, as a national necessity, not as an ordinary expedient for local administration. Another striking instance is the Metropolitan District Commission which exercises authority in Boston and the surrounding towns

[1] See comment of New York Charter Commission of 1923 on charter as a whole—*Report of the New York Charter Commission with a Draft of Charter for the City of New York* (1923), 7.

and cities. In 1889 the legislature of Massachusetts created a Metropolitan Sewerage District embracing twenty-four cities and towns with an area of about 200 square miles. It was administered by a board of three commissioners appointed by the governor, and the cost of its works and their operation was apportioned among the cities and towns within the district. This was followed in 1893 by the creation of a Metropolitan Park Commission operating in a slightly different area, and in 1895 by a Metropolitan Water Board. In 1901 the water and sewer boards were merged and in 1919 the powers of all the preëxisting boards were conveyed to the Metropolitan District Commission. This commission consists of a commissioner and four associate commissioners appointed by the governor for terms of five years, one retiring each year. The Commissioner receives a salary of $6,000 and the Associates $1,000 per annum. To their functions subsequent legislation has added a planning division which advises the legislature on projects affecting the plan of the metropolitan area. No one would deny that the Metropolitan District Commission and its predecessors have been successful in a very large way. The Metropolitan Park System, to go no farther, is one of the finest in the world and an object of great pride to the people of Boston and vicinity. On the whole, there has been surprisingly little objection to the violation of the principle of home rule involved in this method of solving metropolitan problems. Perhaps the fact that approximately half the population and a decided preponderance of the leadership of Massachusetts are included in the metropolitan district has helped to reconcile the cities and towns to such an interference with their autonomy. It is doubtful, however, if this plan will be widely adopted in America.[1]

Metropolitan authorities made up, at least as to a ma-

[1] Similarly constituted bodies are to be found in the Milwaukee Metropolitan Sewerage Commission, the Passaic Valley Sewerage Commission, and a few port authorities.

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(2) Agents of the local authorities

jority of their members, of representatives of the governing bodies of the local units concerned, have been commonly resorted to in England and the British colonies. There are, as has been noted, several of them in Greater London—Metropolitan Water Board, Thames Conservancy Board, and Lee Conservancy Board. The first of these supplies water in an area of 530 square miles including the Administrative County. The other two are charged with the protection of their respective streams from pollution, the promotion of navigation, etc. On each of them the London County Council, the Corporation of the City of London and the councils of the counties and county boroughs concerned are represented. The smaller units are represented either individually or in combination. No attempt is made at a nice apportionment of representation in accordance with population.[1] Their duties seem to be satisfactorily performed, although it is generally admitted that the Water Board with its sixty-six members is too large. That is, of course, the penalty of attempting to give a representative apiece to so many of the smaller units of government within the area. The Thames and Lee Conservancy Boards have twenty-four and fifteen members respectively, and to that extent are more manageable bodies. This form of metropolitan authority is, however, almost certainly condemned to be cumbersome and therefore

[1] Representation in the Metropolitan Water Board which consists of 66 is as follows:

London County Council	14
County Councils of Essex, Kent, Middlesex, Surrey and Hertfordshire, one each	5
Cities of London and Westminster, two each	4
Borough Council West Ham	2
Borough Council East Ham, twenty-seven Metropolitan Borough Councils, Urban District Councils of Leyton, Walthamstow, Tottenham and Wellesden, one each	32
Various groups of Borough and Urban District Councils, one each	7
Thames and Lee Conservancy Boards, one each (The Thames and Lee Conservancy Boards have 24 and 15 members respectively)	2
Total	66

not well fitted to secure the efficient performance of complicated administrative functions. The more numerous the local jurisdictions throughout which its powers are to be exercised, the more cumbersome it will become. In fact, the only instance in which numerous duties, some of them involving a good deal of administration, have been assigned to such a body is in the case of the Essex Border Utilities Commission, in the province of Ontario.[1] It deals with water supply, sewers, hospitals, health, parks and city planning, but the area of the district is only forty-two square miles and the population served but 75,000.

A more important example of such an authority is the Montreal Metropolitan Commission[2] which unites Montreal and fifteen small suburban municipalities. The creation of this commission in 1921 grew out of the fact that four of the smaller municipalities of the island of Montreal were in danger of defaulting on the interest and principal of their bonded debt. It was given power to aid these municipalities with loans on the credit of the whole district and to control their budgets, audit their accounts, etc. Its approval was also made necessary for the exercise of borrowing powers by any of the other municipalities except Montreal. It is now the practice for the Commission to issue its bonds in the case of approved loans and collect the necessary funds for interest and amortization from the city or town concerned. The general expenses of the commission are apportioned on the basis of the taxable property of each municipality. This carries with it a power to examine and revise the assessment rolls of the municipalities under its control. The commission is composed of fifteen members, seven of whom are chosen by the council of Montreal and one each by the councils of Lachine, Outremont, Verdun, and Westmount, and by conventions of delegates of the towns

[1] *Statutes of Ontario*, 6 George V, Chap. 98.

[2] *Statutes of the Province of Quebec*, 11 George V, Chap. 340, as amended, especially by 12 George V, Chaps. 123 and 124, and 13 George V, Chap. 165.

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west of Montreal and east of Montreal respectively. The number is completed by a member appointed by the Lieutenant-Governor and the controller of Montreal, ex-officio. The commission has handled its duties very successively. The fact that it has been entrusted with the duty of making plans for a Boulevard across the entire length of the Island of Montreal may be taken to point the way to an enlarged sphere of activity for the future.[1]

An American example: the Port of New York Authority

In the United States, state as well as local government boundaries may cut across a metropolitan community. The most striking example is that of New York, which lies in three states: New York, New Jersey, and Connecticut. In April, 1921, the first two of these entered into a treaty, later approved by a resolution of Congress, for a common effort at the solution of the problems of the Port of New York. Concurrent acts of the legislatures of the two states provide for a commission of six members, three appointed by the governor of each state for terms of five years, serving without pay. The functions of the commission are to prepare a comprehensive plan for the development of the port, secure the best use of its existing facilities, and eventually to construct, own, and operate bridges, tunnels, and other utilities. The running expenses of the commission are paid by the two states, each appropriating an equal portion. If the commission undertakes the construction of works, it must finance them by the sale of bonds secured by the pledge of the works themselves and their revenues. In the area over which it operates—1500 square miles—and the population involved—8,000,000—this is the most important of *ad hoc* metropolitan authorities. It has devised a comprehensive plan, in carrying out a portion of which it has secured the coöperation of the railroads, represented the interests of the port of New York before the Inter-

[1] Another example is to be found in the Greater Winnipeg Water District (incorporated in 1913), embracing the city of Winnipeg and eight neighboring cities and villages with an area of fifty-two square miles and a population of 252,355.

state Commerce Commission, made numerous studies of special port problems and it has under way a project for a bridge over the Hudson.

(3) Directly elected by the people

The Sanitary District of Chicago, established in 1889, is the largest *ad hoc* metropolitan authority whose governing body derives an independent existence from popular election. The district embraces fifty cities and other local units. Its area is 436 square miles, with a population of 3,213,000. Its principal object was to divert the sewage of Chicago which naturally drains into Lake Michigan through the Des Plaines and Illinois rivers into the Mississippi. Incidentally it has become interested in power development. The Sanitary District is governed by nine trustees chosen by the electors of the District, three every two years for six-year terms.

The laws of California provide for the formation of utility districts embracing several cities regardless of county boundaries, subject to acceptance of the plan by popular vote in each city. Such a district was established in the region lying on the eastern shore of San Francisco bay in May, 1923. It now consists of Oakland, Berkeley, and Alameda, together with six other cities. It is governed by five directors elected by wards and a general manager chosen by the directors. So far, it has concerned itself only with the matter of water supply, although it may be authorized by vote of the people to acquire any public utility.

(4) Chosen by persons directly interested in the service rendered

A very different type of *ad hoc* authority is provided for the port of London, which lies partly within and partly without the Administrative County. It consists of eighteen members elected by payers of port dues, wharfingers, and owners of river craft and ten appointed members (one by the admiralty, two by the minister of transport, four by the London county council, two by the city corporation, and one by Trinity House). The port of London authority deals successfully with interests of the first order of magnitude, and there is undoubtedly a wide

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field for this type of organization. A partial application of the same principle is to be found in the recently created Home Counties Traffic Advisory Committee, to which for certain purposes representatives of labor, bus operators and automobile owners are called in as additional members. These concessions to the idea of representation of interests, as contrasted with territorial units, are extremely suggestive.

Extra-territorial functions of municipality

Certain of the problems arising from metropolitan conditions can be put in the way of solution by the simple expedient of permitting the core municipality to exercise authority beyond its limits. Thus, the corporation of the City of London is the Port Sanitary Authority, which extends its activities for miles up and down the Thames. The planning powers of cities not infrequently extend to the surrounding zone. Nor is it unusual for them to maintain parks at a considerable distance from their borders. There is, of course, no inherent reason why a municipality engaged in the operation of a street railway should not be empowered to extend its lines in the surrounding country on the same terms that a privately owned company might do. The city is in a very real sense a business corporation, and it ought not to be denied the opportunity to make such arrangements with its neighbors as the successful use of its corporate powers requires. The London county council, for example, contracts with its neighbors for the disposal of their sewage, and the great English provincial cities often carry the benefits of their services and utilities to their smaller neighbors. In connection with certain municipal utilities, such as the supply of water or electric energy, cities are often given powers, including the right of eminent domain, to be exercised at a great distance from the city. San Francisco has built highways and bridges and constructed and operated a railroad in the midst of the High Sierras, to the end that she may impound in the Hetch-

Hetchy basin the snow-born waters of the mountains. When the work is completed, she will exercise police supervision over an extensive drainage area, and she will be in a position to contract with several of her neighbors for the sale of surplus water and electricity.

Voluntary coöperation for the solution of metropolitan problems

The difficulties in the way of all compulsory methods of meeting metropolitan needs, whether by the expansion of city boundaries or the creation of *ad hoc* authorities, are so great that many persons believe it is best to rely wholly and frankly on voluntary coöperation. The possibilities of coöperation are by no means exhausted by the contract method discussed in the preceding paragraph. Reference has already been made to the machinery for communal coöperation set up by the French municipal code. At the same time that the Prussian Landtag created in 1911 the planning union for Greater Berlin, it passed an optional planning union act for other cities. Provision is made in the English acts relating to local government, and particularly in the city planning act, for joint committees to deal with matters of common interest. Even where, however, no formal machinery is provided and the contract method is inapplicable, the desired results may be accomplished by a concurrent use of the powers possessed by each of the authorities concerned. It is upon the success of their powers of persuasion over the vast number of authorities which lie within the area of their researches, that the "Plan of New York and its Environs" depends for the actual achievement of its purposes. Those engaged in this most ambitious of city planning projects do not dream of the establishment of a single authority throughout the metropolitan region. They do not even advocate consolidation within the jurisdiction of each of the three states affected. There may be no more to their policy than a graceful acceptance of the inevitable, for it is by no means probable that hundreds of independent authorities

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can all be brought to see their duty even by the most inspiring leadership of which a private philanthropy is capable.

Relation of city and county

Not the least serious and perplexing of our metropolitan problems in the United States are concerned with the relations between the city and the county. In France, where the whole state, urban and rural districts alike, is divided into communes and where the intermediate unit, the department, has small functions of self-government, no such question arises. In Prussia, cities of over 25,000 have automatically become circles and the municipal authorities have exercised all the powers naturally belonging to the latter. This has meant that the circle, where it has an independent existence, is a predominantly rural unit. In England, whence we derived the fundamentals of our county system and our general conception of the relationship of city and county, it was the custom, even centuries ago, to confer county powers on specially favored boroughs. From 1835 until very recently it was the practice to make every borough of 50,000 population or more a separate county. In this country, however, the general tendency has been to leave cities, irrespective of their size, in the county where they territorially lie. Virginia alone among the states of the union has systematically followed the English practice. In that commonwealth all first-class cities (over 10,000 population) are at the same time counties. Elsewhere there have been only scattered instances of city-county consolidation. In Baltimore (1849), San Francisco (1856), St. Louis (1876) and Denver (1902) [1] genuine consolidation has taken place. New Orleans and Philadelphia are co-terminous with counties of the same names, and Boston is all but identical with Suffolk County. In Greater New York there are five counties: New York, Kings, Bronx, Queens, and Richmond, each corresponding with a borough. They are primarily judicial districts, with the incidental

[1] Consolidation in Denver was held up in the courts until 1911.

machinery of a sheriff's office, jails, etc. There is little or no duplication of functions between the city of New York and these counties, although there is some room for reform in the administration of the counties themselves.

The unfortunate results of leaving cities in the counties have been repeatedly rehearsed. First among them is duplication of functions between the city and the county. This is true practically everywhere except in New England, where the county has few general governmental powers, being really little more than the district within which courts are organized. It is, of course, most serious in those states where the county is the sole unit of rural local government. In California, for example, a county is necessarily possessed of all the machinery of a complete local government. The testimony from the few places where city-county consolidation has taken place is generally to the effect that great savings have been accomplished by it.[1] Second, the people of the city rarely take any interest in the government of their county. They vote falteringly and unintelligently, leaving the professional politicians the field of county politics almost unchallenged. The results, where the city contains the major part of the population, are always unfortunate and sometimes scandalous. Where a single great city contains 90 percent of the population, 90 percent of the wealth and only 10 percent of the area of a county, it requires no demonstration that the "county ring" can dispose of vast resources almost unchecked. For many years the energies of municipal reformers were directed to securing city and county separation[2] as the solution of these difficulties. These efforts, however, met with a depressing succession of failures. Sometimes

[1] This conclusion is partially supported by the readjusted tax rates of cities given by C. E. Rightor in *National Municipal Review*, XIV, 753-763 (December, 1925).

[2] "Separation" is a more descriptive term in this connection than "consolidation", which is more properly applied to the union of existing city and county in one organization.

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it was the people of the rural part of the county who blocked county division. Sometimes it was the county politicians, more strongly entrenched than any other political group, who defeated proposals for reform.

City-county separation not the solution

In recent years, however, we have begun to question the universal applicability of the formula of city and county separation. In England the increasing number and expanding boundaries of county boroughs have brought it to pass that the county-councils are threatened with having to serve a wide area with nothing but the financial resources of a few poor parishes with which to do it. Every proposal to create or enlarge a county borough is now so vigorously opposed that the uniform practice of nearly a century has been interrupted. In our own country the same situation would arise were large cities commonly to become separate counties. Take Detroit out of Wayne County, for example, and there would be left only an extensive and impoverished rump which could with difficulty provide the services now demanded of a rural local government. These are no longer limited to the care of a few gravel roads and some nondescript provision for the poor and sick. They are so numerous, and in the aggregate so costly, that the town and township have been proved wholly inadequate and are on the road to extinction. The county is the smallest possible unit for rural local government in the United States today, and there is reason in the argument that it needs the support of the cities within it. Indeed, the facts now seem to require a complete readjustment of the areas of local government and a scientific distribution of the burden of their essential services.[1] Here, too, it may be, will be found the real solution of the metropolitan problem. The development of such a scheme is, however, another story and for another book.

[1] For an interesting suggestion along these lines, see G. D. H. Cole, *The Future of Local Government* (1921). See also T. H. Reed, "The Region, a New Governmental Unit," *National Municipal Review*, XIV, 417-423 (July, 1925).

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